PART I

FEDERAL REGISTER

VOLUME 13 NUMBER 231

Washington, Saturday, November 27, 1948

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders)

[Orange Reg. 154]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.411 *Orange Regulation 154*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR and Supps. Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. and Sup. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for such effective date.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., November 29, 1948, and ending at 12:01 a. m., e. s. t., December 20, 1948, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which grade U. S. No. 2 Bright, U. S. No. 2, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which are of size smaller than a size that will pack 288 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(iii) Any Temple oranges, grown in Regulation Area I or Regulation Area II, which grade U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade.

(2) As used in this section, the terms "handler," "ship," "Regulation Area I," and "Regulation Area II" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," "U. S. No. 3," "standard pack," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Oranges (13 F. R. 5174, 5306). (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 48-10408; Filed, Nov. 26, 1948; 10:31 a. m.]

[Tangerine Reg. 78]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.412 *Tangerine Regulation 78*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR and Supps. Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the afore-

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This issue is in two parts, the second of which consists of a complete revision of the regulations of the Veterans' Administration, Title 38, Chapter I, Parts 1–36.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this

section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. and Sup. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., November 29, 1948, and ending at 12:01 a. m., e. s. t., December 20, 1948, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, which grade U. S. No. 2, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade; or

(ii) Any tangerines, grown in the State of Florida, which are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches).

(2) As used in this section, "handler" and "ship" shall have the same meaning as is given to each such term in said amended marketing agreement and order; and "U. S. No. 2," "U. S. No. 2 Russet," "U. S. No. 3," and "standard pack" shall each have the same meaning as is given to the respective term in the United States Standards for Tangerines (13 F. R. 4790). (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 48-10406; Filed, Nov. 26, 1948; 10:31 a. m.]

[Grapefruit Reg. 105]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.413 *Grapefruit Regulation 105*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR and Supps., Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. and Sup. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., November 29, 1948, and ending at 12:01 a. m., e. s. t., December 20, 1948, no handler shall ship:

(i) Any grapefruit of any variety, grown in the State of Florida, which grade U. S. No. 2 Russet, or lower than U. S. No. 2 Russet;

(ii) Any seeded grapefruit, other than pink grapefruit, grown in the State of Florida which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iii) Any pink seeded grapefruit grown in the State of Florida which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(iv) Any seedless grapefruit of any variety, grown in the State of Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, "handler" and "ship" shall have the same meaning as is given to each such term in said amended marketing agreement and order; and the terms "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Grapefruit (13 F. R. 4787). (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 48-10405; Filed, Nov. 26, 1948; 10:31 a. m.]

[Lemon Reg. 301, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

Lemon Regulation 301, as amended—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR, Cum. Supp., 953.1 et seq.; 13 F. R. 766), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rule-making procedure (60 Stat. 237; 5 U. S. C. and Sup. 1001 et se.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient; and this amendment relieves restrictions on the handling of lemons grown in the State of California or in the State of Arizona.

(b) *Order, as amended.* The provisions in paragraph (b) (1) of § 953.408 (Lemon Regulation 301, 13 F. R. 6836), are hereby amended to read as follows:

(1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 21, 1948, and ending at 12:01 a. m., P. s. t., November 28, 1948, is hereby fixed as follows:

(i) District 1: 278 carloads;

(ii) District 2: 7 carloads.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 48-10409; Filed, Nov. 26, 1948; 10:32 a. m.]

[Lemon Reg. 302]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.409 *Lemon Regulation 302*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR, Cum. Supp., 953.1 et seq.; 13 F. R. 766), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 28, 1948 and ending at 12:01 a. m., P. s. t., December 5, 1948 is hereby fixed as follows:

(i) District 1: 268 carloads;

(ii) District 2: 7 carloads.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached to Lemon Regulation 301 (13 F. R. 6836), and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "carloads," "prorate base," "District 1," and "District 2" shall have the same meaning as is given to each such term in the said amended marketing agreement and order. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 48-10407; Filed, Nov. 26, 1948; 10:31 a. m.]

[Orange Reg. 256]

PART 966—ORANGES GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 966.402 *Orange Regulation 256*—(a) *Findings.* (1) Pursuant to the provisions of Order No. 66 (7 CFR, Cum. Supp., 966.1 et seq.) regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) The quantity of oranges grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 28, 1948, and ending at 12:01 a. m., P. s. t., December 5, 1948, is hereby fixed as follows:

(i) *Valencia oranges.*

(*a*) Prorate District No. 1: No movement;

(*b*) Prorate District No. 2: Unlimited movement;

(*c*) Prorate District No. 3: No movement.

(ii) *Oranges other than Valencia oranges.*

(*a*) Prorate District No. 1: 1,250 carloads;

(*b*) Prorate District No. 2: No movement;

(*c*) Prorate District No. 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference.

(3) As used herein, "handled," "handler," "carloads," and "prorate base" shall have the same meaning as is given to each such term in the said order; and "Prorate District No. 1," "Prorate District No. 2," and "Prorate District No. 3" shall have the same meaning as is given to each such term in § 966.107 (11 F. R. 10258) of the rules and regulations contained in this part. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 24th day of November 1948.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

PRORATE BASE SCHEDULE

(Orange Regulation Period No. 256)

[12:01 a. m. Nov. 28, 1948, to 12:01 a. m. Dec. 5, 1948]

ALL ORANGES OTHER THAN VALENCIA ORANGES

Prorate District No. 1

Handler	*Prorate base (percent)*
Total	100.0000
A. F. G. Lindsay	1.5938
A. F. G. Porterville	2.0464
A. F. G. Sides	.6314
Ivanhoe Cooperative Association	.6005
Dofflemyer & Sons, W. Todd	.6935

PRORATE BASE SCHEDULE—Continued

ALL ORANGES OTHER THAN VALENCIA ORANGES—continued

Prorate District No. 1—Continued

Handler	*Prorate base (percent)*
Earlibest Orange Association	1.2501
Elderwood Citrus Association	.8745
Exeter Citrus Association	2.5258
Exeter Orange Growers Association	1.2882
Exeter Orchards Association	1.5459
Hillside Packing Association	1.6766
Ivanhoe Mutual Orange Association	1.0128
Klink Citrus Association	4.7646
Lemon Cove Association	2.0229
Lindsay Citrus Growers Association	2.5001
Lindsay Coop. Citrus Association	1.4392
Lindsay District Orange Co	1.1095
Lindsay Fruit Association	1.8272
Lindsay Orange Growers Association	.7812
Naranjo Packing House Co	1.0693
Orange Cove Citrus Association	2.9490
Orange Cove Orange Growers	1.9190
Orange Packing Company	1.2023
Orosi Foothill Citrus Association	1.3747
Paloma Citrus Fruit Association	1.0965
Rocky Hill Citrus Association	1.6379
Sanger Citrus Association	3.6710
Sequoia Citrus Association	1.1651
Stark Packing Corp	1.9649
Visalia Citrus Association	1.5863
Waddell & Son	1.7005
Butte County Citrus Association, Inc.	1.3682
James Mills Orchards Co	.4885
Orland Orange Growers Association, Inc	1.1339
Andrews Bros. of California	.5491
Baird-Neece Corp	1.8832
Beattie Association, Agnes M	.7213
Grand View Heights Cit. Association	2.3798
Magnolia Citrus Association	2.1965
Porterville Citrus Association, The	1.3795
Richgrove-Jasmine Citrus Association	1.4990
Sanidlands Fruit Co	1.5672
Strathmore Coop. Association	1.5926
Strathmore Dist. Orange Association	1.4162
Strathmore Fruit Growers Association	1.0823
Strathmore Packing House Co	1.4803
Sunflower Packing Association, Inc	2.3368
Sunland Packing House Co	2.7333
Terra Bella Citrus Association	1.0867
Tule River Citrus Association	1.2808
Kroells Bros., Ltd	1.4288
Lindsay Mutual Groves	1.5649
Martin Ranch	1.2103
Woodlake Packing House	2.3219
Anderson Packing Co., R. M	.4722
Baker Brothers	.1259
California Citrus Groves, Inc., Ltd	1.7281
Chess Co., Meyer W	.3618
Edison Groves, Inc	.7609
Exeter Groves Packing Co	.6586
Furr, N. C	.5249
Ghianda Ranch	.0322
Harding & Leggett	1.4628
Justman Frankenthal Co	.1524
Lo Bue Bros	.8234
Marks, W. & M	.3798
Panno Fruit Co., Carlo	.2013
Randolph Marketing Co	2.0423
Reimers, Don H	.3332
Rooke Packing Co., B. G	1.0221
Webb Packing Co., Inc	.5625
Wollenman Packing Co	.9868
Woodlake Heights Packing Corp	.4566
Zaninovich Bros	.6904

[F. R. Doc. 48-10411; Filed, Nov. 26, 1948; 10:32 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Federal Security Agency

EDITORIAL CHANGES INCIDENT TO PREPARATION OF CODE OF FEDERAL REGULATIONS, 1949 EDITION

In order to conform Chapter I of Title 21 to the scope and style of the Code of Federal Regulations, 1949 Edition, authorized and directed by Executive Order 9930 of February 4, 1948 (13 F. R. 519), the following editorial changes are made, effective upon publication in the FEDERAL REGISTER:

1. The codification of Part 1, Organization and Procedures, is discontinued. Future amendments to statements of organization will be published in the Notices section of the FEDERAL REGISTER.

2. Part 2, Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act, is redesignated Part 1.

3. The headnote to Part 10 is amended to read "General Regulations Relating to Definitions and Standards for Food."

Dated: November 22, 1948.

[SEAL] OSCAR R. EWING,
Administrator.

[F. R. Doc. 48-10326; Filed, Nov. 26, 1948; 8:50 a. m.]

PART 15—CEREAL FLOURS AND RELATED PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

WHEAT FLOUR AND RELATED PRODUCTS

In the matter of amending the definitions and standards of identity for flour, enriched flour, bromated flour, enriched bromated flour, self-rising flour, enriched self-rising flour, phosphated flour, whole wheat flour, bromated whole wheat flour, and whole durum wheat flour:

By virtue of the authority vested in the Federal Security Administrator by the provisions of the Federal Food, Drug, and Cosmetic Act (Secs. 401, 701; 52 Stat. 1046, 1055; 21 U. S. C. 341, 371), and upon the basis of substantial evidence received at the hearing held pursuant to notice published in the FEDERAL REGISTER on August 26, 1948 (13 F. R. 4964), no exceptions having been filed to the tentative order issued by the Federal Security Administrator and published in the FEDERAL REGISTER on November 2, 1948 (13 F. R. 6456), the following order is hereby made:

Findings of fact.[1] 1. By order published in the FEDERAL REGISTER on May 27, 1941 (6 F. R. 2579; 21 CFR, Cum. Supp. 15.00, 15.10, 15.20, 15.30, 15.50, 15.60, 15.70, 15.80, 15.90, and 15.100), as amended (13 F. R. 4231), the standards of identity for flour, enriched flour, bromated flour, enriched bromated flour, self-rising flour, enriched self-rising flour, phosphated flour, whole wheat flour, bromated whole wheat flour, and whole durum wheat flour provided for the use of nitrogen trichloride as an optional bleaching ingredient. under prescribed conditions.

2. Since the promulgation of these standards it has been found that flour treated with nitrogen trichloride has caused in dogs certain toxic manifestations known as canine hysteria. Experiments by qualified investigators have shown that flour treated with large quantities of nitrogen trichloride is toxic to some animals in addition to dogs. Although the experimental work on humans is limited, no adverse effect as a result of foods prepared from flours treated with nitrogen trichloride has been found. (R. 13–16, 37–39, 41–44, 47–48, 63, 70–71, 83–86, 90, 103–105, 107–109, 112–115, 130–136, 160–161, 165–167, 208–210, 217–218, 283–290, 297–298, 323–327, 350–376, 479; Ex. 2, 3, 5, 10, 16, 18)

3. Chlorine dioxide has a bleaching and artificial aging effect on flour similar to that of nitrogen trichloride. The mechanism of its action has not been established, but it appears that the chlorine dioxide releases oxygen when in contact with flour and that the oxygen is the bleaching agent. Experiments by qualified investigators have shown that flours treated with chlorine dioxide, or products baked from flours treated with chlorine dioxide, do not cause canine hysteria, and no symptoms of any toxicity have been detected in the several other species, including man, that have been studied. (R. 44–48, 53–64, 67–82, 86–90, 92, 110–111, 118–125, 130–136, 139–143, 152, 153, 157–160, 165–175, 177–183, 199, 207–222, 231, 235–236, 238–240, 243–244, 246, 248, 250–252, 255, 257–258, 261, 267–272, 283–285, 290–291, 299–301, 350–376, 386–392, 398, 405–410, 430–436, 482; Ex. 6, 10, 11, 13, 14, 15, 16, 18, 20, 21, 23)

4. Only enough chlorine dioxide is used to accomplish the purposes of bleaching and artificial aging, as excessive quantities impair the baking quality of the flour. (R. 235–240, 242–244, 247–250, 254, 379–384, 387–394, 397–398, 405–410; Ex. 14, 19, 20, 21)

5. When used under the controls now prescribed for bleaching and artificially againg flour, chlorine dioxide is suitable for the purpose of bleaching and artificially aging flour, enriched flour, bromated flour, enriched bromated flour, self-rising flour, enriched self-rising flour, phosphated flour, whole wheat flour, bromated whole wheat flour, and whole durum wheat flour. (R. 195–198, 200, 254–257, 267–277, 386–398, 420–427; Ex. 22)

6. In addition to the carriers or diluents prescribed for use with the optional bleaching ingredient benzoyl peroxide, it has been found that other substances or mixtures of these substances with each other or with those now prescribed are also suitable for such use. Such substances are dicalcium phosphate, tricalcium phosphate, starch, sodium aluminum sulfate, and calcium carbonate. The total amount of the diluent or carrier used should not exceed six parts by weight for one part by weight of benzoyl peroxide. (R. 496–500, 503–505, 524–525, 527–531, 535, 537, 548, 554, 558)

7. Consumers generally recognize that the word "bleached" when applied to flour distinguishes between bleached and unbleached flour. The term "bleached" describes the ingredient or ingredients added to flour through the bleaching process, including chlorine dioxide, or products resulting from the use of chlorine dioxide, and benzoyl peroxide with its carriers. (R. 232–233, 277, 396–400, 412–413, 484–485, 496–497, 514)

Conclusions. Upon consideration of the whole record and the foregoing findings of fact, it is concluded that it will promote honesty and fair dealing in the interest of consumers to amend the definitions and standards of identity for flour (§ 15.00), enriched flour (§ 15.10), bromated flour (§ 15.20), enriched bromated flour (§ 15.30), self-rising flour (§ 15.50), enriched self-rising flour (§ 15.60), and phosphated flour (§ 15.70) by deleting nitrogen trichloride as an optional ingredient and substituting therefor chlorine dioxide, and by amending the requirements as to the ingredients which may be used with benzoyl peroxide as indicated in finding 6; and to amend the definitions and standards of identity for whole wheat flour (§ 15.80), bromated whole wheat flour (§ 15.90), and whole durum wheat flour (§ 15.100) by deleting nitrogen trichloride as an optional ingredient and substituting therefor chlorine dioxide.

It is therefore ordered, That the amendments be made so that the definitions and standards of identity read as follows:

1. Section 15.00 is amended to read as follows:

§ 15.00 *Flour, white flour, wheat flour, plain flour; identity; label statement of optional ingredients.* (a) Flour, white flour, wheat flour, plain flour, is the food prepared by grinding and bolting cleaned wheat other than durum wheat and red durum wheat; to compensate for any natural deficiency of enzymes, malted wheat, malted wheat flour, malted barley flour, or any combination of two or more of these, may be used; but the quantity of malted barley flour so used is not more than 0.25%. One of the cloths through which the flour is bolted has openings not larger than those of woven wire cloth designated "149 micron (No. 100)" in Table 1 of "Standard Specifications for Sieves," published March 1, 1940, in L. C. 584 of the U. S. Department of Commerce, National Bureau of Standards. The flour is freed from bran coat, or bran coat and germ, to such extent that the percent of ash therein, calculated to a moisture-free basis is not more than the sum of $\frac{1}{20}$ of the percent of protein therein, calculated to a moisture-free basis, and 0.35. Its moisture content is not more than 15%. Unless such addition conceals damage or inferiority of the flour or makes it appear better or of greater value than it is, one or any combination of two or more of the following optional bleaching ingredients may be added in a quantity not more than sufficient for bleaching or, in case such ingredient has an artificial aging effect, in a quantity not more than suf-

[1] The citations following each finding of fact refer to the pages of the transcript of the testimony and the exhibits received in evidence at the hearing.

ficient for bleaching and such artificial aging effect:

(1) Oxides of nitrogen.
(2) Chlorine.
(3) Nitrosyl chloride.
(4) Chlorine dioxide.
(5) One part by weight of benzoyl peroxide mixed with not more than six parts by weight of one or any mixture of two or more of the following: potassium alum, calcium sulfate, magnesium carbonate, sodium aluminum sulfate, dicalcium phosphate, tricalcium phosphate, starch, calcium carbonate.

(b) When any optional bleaching ingredient issued, the label shall bear the word "Bleached." Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the word "Bleached" shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter; except that where such name is a part of a trade-mark or brand, other written, printed, or graphic matter, which is also a part of such trade-mark or brand, may so intervene if the word "Bleached" is in such juxtaposition with such trade-mark or brand as to be conspicuously related to such name.

(c) For the purposes of this section:

(1) Ash is determined by the method prescribed in the book "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Edition, 1940, page 212, under "Method I—Official." (Ed. note: 6th Ed., 1945, p. 238.) Ash is calculated to a moisture-free basis by subtracting the percent of moisture in the flour from 100, dividing the remainder into the percent of ash, and multiplying the quotient by 100.

(2) Protein is 5.7 times the nitrogen as determined by the method prescribed in such book on page 26, under "Kjeldahl-Gunning-Arnold Method—Official." (Ed. note: 6th Ed., 1945, p. 27.) Protein is calculated to a moisture-free basis by subtracting the percent of moisture in the flour from 100, dividing the remainder into the percent of protein, and multiplying the quotient by 100.

(3) Moisture is determined by the method prescribed in such book on page 211, under "Vacuum Oven Method—Official." (Ed. note: 6th Ed., 1945, p. 237)

2. No change in wording is necessary in § 15.10 *Enriched flour;* § 15.20 *Bromated flour;* § 15.30 *Enriched bromated flour;* § 15.50 *Self-rising flour;* § 15.60 *Enriched self-rising flour;* § 15.70 *Phosphated flour,* since the bleaching ingredients are fixed by § 15.00.

3. Section 15.80 is amended to read as follows:

§ 15.80 *Whole wheat flour, graham flour, entire wheat flour; identity; label statement of optional ingredients.* (a) Whole wheat flour, graham flour, entire wheat flour, is the food prepared by so grinding cleaned wheat other than durum wheat and red durum wheat that, when tested by the method prescribed in paragraph (c) (2) of this section, not less than 90% passes through a No. 8 sieve and not less than 50% passes through a No. 20 sieve. The proportions of the natural constituents of such wheat, other than moisture, remain unaltered. To compensate for any natural deficiency of enzymes, malted wheat, malted wheat flour, malted barley flour, or any combination of two or more of these, may be used; but the quantity of malted wheat flour so used is not more than 0.5%, and the quantity of malted barley flour so used is not more than 0.25 percent. The moisture content of whole wheat flour is not more than 15%. Unless such addition conceals damage or inferiority of the whole wheat flour or makes it appear better or of greater value than it is, the optional bleaching ingredient chlorine dioxide, chlorine, or a mixture of nitrosyl chloride and chlorine, may be added in a quantity not more than sufficient for bleaching and artificial aging effects.

(b) When any optional bleaching ingredient is used, the label shall bear the word "Bleached." Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the word "Bleached" shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter; except that where such name is a part of a trade-mark or brand, other written, printed, or graphic matter, which is also a part of such trade-mark or brand, may so intervene if the word "Bleached" is in such juxtaposition with such trade-mark or brand as to be conspicuously related to such name.

(c) For the purposes of this section: (1) moisture is determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Edition, 1940, page 211, under "Vacuum Oven Method—Official." (Ed. note: 6th Ed., 1945, p. 237.)

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 8 and No. 20 sieves, having standard 8-inch full height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L. C. 584 of the U. S. Department of Commerce, National Bureau of Standards. Fit a No. 8 sieve into a No. 20 sieve. Attach bottom pan to the No. 20 sieve. Pour 100 gm. of the sample into the No. 8 sieve. Attach cover and hold the assembly in a slightly inclined position with on hand. Shake the sieves by striking the sides against the other hand with an upward stroke, at the rate of about 150 times per minute. Turn the sieves about ⅙ of a revolution each time in the same direction, after each 25 strokes. Continue shaking for 2 minutes. Weigh the material which fails to pass through the No. 8 sieve and the material which passes through the No. 20 sieve.

4. No change in wording is necessary in § 15.90 *Bromated whole wheat flour;* and § 15.100 *Whole durum wheat flour,* since the bleaching ingredients are fixed by § 15.80.

Effective dates. Chlorine dioxide is a gaseous substance whose practical use as a bleaching ingredient is made possible by the employment of certain machines for generating the chlorine dioxide gas, mixing it with air, and bringing measured amounts of the gaseous mixture in contact with the flour to be treated. The manufacture and installation of suitable machines to replace those used for bleaching with nitrogen trichloride will be time-consuming. Such change-over must be started immediately, in order to make possible the elimination of nitrogen trichloride as a bleaching agent for the various flours at the earliest practicable time. The necessity for beginning the change-over immediately creates an emergency condition which requires that the recognition of chlorine dioxide as an optional ingredient be made effective on the date of publication of this order in the FEDERAL REGISTER.

The time required fully to effect the change-over necessitates that a somewhat longer period be allowed before deleting nitrogen trichloride from the standard as an optional ingredient. No unusual conditions exist with respect to the use of additional diluting agents in conjunction with benzoyl peroxide.

Wherefore, it is ordered, That with respect to the definitions and standards of identity for flour (§ 15.00), enriched flour (§ 15.10), bromated flour (§ 15.20), enriched bromated flour (§ 15.30), self-rising flour (§ 15.50), enriched self-rising flour (§ 15.60), and phosphated flour (§ 15.70), insofar as the amendments hereby promulgated provide for designating chlorine dioxide as an optional bleaching ingredient, they shall become effective immediately upon publication of this order in the FEDERAL REGISTER; insofar as such amendments provide for carriers in addition to those previously permitted as carriers for benzoyl peroxide, they shall become effective ninety (90) days after the publication of this order in the FEDERAL REGISTER; and insofar as such amendments provide for deleting nitrogen trichloride from the permitted optional bleaching ingredients, they shall become effective August 1, 1949.

It is further ordered, That with respect to the definitions and standards of identity for whole wheat flour (§ 15.80), bromated whole wheat flour (§ 15.90), and whole durum wheat flour (§ 15.100), insofar as the amendments hereby promulgated provide for designating chlorine dioxide as an optional bleaching ingredient, they shall become effective immediately upon publication of this order in the FEDERAL REGISTER; and insofar as such amendments provide for deleting nitrogen trichloride from the permitted optional bleaching ingredients, they shall become effective August 1, 1949.

(Secs. 401, 701, 52 Stat. 1046, 1055; 21 U. S. C. 341, 371)

Dated: November 19, 1948.

[SEAL] J. DONALD KINGSLEY,
Acting Administrator.

[F. R. Doc. 48-10330; Filed, Nov. 26, 1948; 8:51 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter II—The Tax Court of the United States [1]

PART 701—RULES OF PRACTICE

PART 702—FORMS [2]

MISCELLANEOUS AMENDMENTS

1. Section 701.1 is amended by adding the word "time" to the title, by changing the letter "c" in "clerk", in the first sentence, to capital "C", and by adding the following new paragraph:

Time, as provided in this and other sections and in orders and notices of the Court, means standard time in the city mentioned except when advanced time is substituted therefor by law. (See § 701.61.)

2. Section 701.2 is amended by changing "secretary" in the second sentence of the third paragraph to "Clerk"; by changing "§ 701.8" in the fifth paragraph to "§ 701.7 (b)", and by adding to the last paragraph: "(See § 701.24.)"

3. Section 701.4 (e) is amended by changing the reference at the end of the paragraph to read as follows: "(See §§ 701.6 and 701.7 (c) (4) (i) and § 702.2.)"

4. Section 701.4 (f) is amended to read as follows:

§ 701.4 *Form and style of papers.* * * *

(f) The signature, either of the petitioner or of his counsel, shall be subscribed in writing to the original of all pleadings, motions, and briefs, and shall be in individual and not in firm name, except that the signature of a petitioner corporation shall be in the name of the corporation by one of its active officers, thus: "John Doe, Inc., by Richard Roe, President." The name and the mailing address of the petitioner or counsel actually signing shall be typed or printed immediately beneath the written signature.

5. Section 701.5 numbering is changed to § 701.6 and the numeral "6" in the reference at the end of the section is changed to "7."

6. Section 701.6 numbering is changed to § 701.7, and is amended to read as follows:

§ 701.7 *Initiation of a proceeding; petition; filing; fee; form*—(a) *Petition*—(1) *Filing.* A proceeding shall be initiated by filing with the Court a petition consisting of an original and four complete, accurately conformed, clear copies, either printed or typed. (See §§ 701.4 and 701.6.)

(2) *Improper petition; dismissal.* Failure of a petition to comply with this section and with §§ 701.4 and 701.6 shall be ground for dismissal of the proceeding for failure properly to prosecute.

See also section 272 (a) and (c), Internal Revenue Code, in regard to absolute statutory time limit on filing.

(b) *Fee for filing petition.* The fee for filing a petition with the Court shall be $10, payable at the time of filing. Make checks, money-orders, etc. payable to The Treasurer of the United States.

(c) *Form of petition.* (1) The petition shall be substantially in accordance with § 702.2.

(2) It shall be complete in itself so as fully to state the issues.

(3) No telegram, cablegram, radiogram, telephone call or similar communication will be recognized as a petition.

(4) The petition shall contain:

(i) A caption in the following form:

THE TAX COURT OF THE UNITED STATES

Docket No. --

Petitioner

v.

Commissioner of Internal Revenue, Respondent

PETITION

(ii) Proper allegations showing jurisdiction in the Court.

(iii) A statement of the amount of the deficiency (or liability, as the case may be), determined by the Commissioner, the nature of the tax, the period for which determined, and the collection district in which the return was filed.

(iv) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency. Issues in respect of which the burden of proof is by statute placed upon the Commissioner will not be deemed to be raised by the petitioner in the absence of assignments of error in respect thereof. Each assignment of error shall be numbered.

(v) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error, except those assignments of error in respect of which the burden of proof is by statute placed upon the Commissioner.

(vi) A prayer, setting forth relief sought by the petitioner.

(vii) The signature of the petitioner or that of his counsel. (See § 701.4.)

(viii) A verification by the petitioner: *Provided,* That where the petitioner is sojourning outside the United States or is a nonresident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and who shall state in his verification that he acts pursuant to such power, that such power has not been revoked, that petitioner is absent from the United States, and the grounds of his knowledge of the facts alleged in the petition. As used herein the term "United States" includes only the States and the District of Columbia. A notary public is not authorized to administer oaths, etc., in matters in which he is employed as counsel. (See Title 1, ch. 5, D. C. Code 1940, and 26 Op. A. G. 236.)

The verification shall contain a statement that the fiduciaries signing and verifying have authority to act for the taxpayer.

Where the petitioner is a corporation, the person verifying shall state in his verification that he has authority to act for the corporation.

The signature and the verification to the petition shall be considered the certificate of those performing these acts that there is good ground for the petition, the proceeding has not been instituted merely for delay, and it is not frivolous.

(ix) A copy of the notice of deficiency (or liability, as the case may be), shall be appended to the petition. If a statement has accompanied the notice of deficiency, so much thereof as is material to the issues set out in the assignments of error likewise shall be appended. If the notice of deficiency refers to prior notices from the Bureau, which are necessary to elucidate the determination, such parts thereof as are material to the issues set out in the assignments of error shall likewise be appended. (See § 702.2.)

7. Sections 701.7 and 701.8, old sections, are eliminated, as they are incorporated in new § 701.7.

8. Section 701.9 numbering is changed to § 701.5 and the title is amended to read: *Filing of all documents.*

9. Section 701.11 is amended to read as follows:

§ 701.11 *Docket.* Upon receipt of the petition, the proceeding will be entered upon the docket and assigned a number and the parties notified thereof. This docket number shall be placed by the parties on all papers thereafter filed in the proceeding and referred to in all correspondence with the Court.

10. Section 701.17, third paragraph, is amended to read as follows:

Upon motion made, the Court may, in its discretion, at any time before the conclusion of the hearing, permit a party to a proceeding to amend the pleadings in stated particulars to conform to the proof.

11. Section 701.19 is amended to read as follows:

§ 701.19 *Motions.* (a) Motions must be timely, must fully set forth the alleged reasons for the action sought and must be prepared in the form and style prescribed by § 701.4.

(b) Motions will be acted upon as justice may require and may, in the discretion of the Court, be placed upon the motion calendar for argument. See § 701.27 (a) and (c), and § 701.30 (b). The Clerk will serve a copy of each motion upon the opposite party. (See § 701.22.)

(c) The filing of a motion shall not constitute cause for postponement of a hearing from the date set. (See also § 701.27 (c) on motions for continuance.)

(d) If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial, the maker thereof shall promptly reduce it to writing and file it with the Court unless the Division sitting directs otherwise.

(e) No motion for rehearing, further hearing, or reconsideration may, except by special leave, be filed more than 30 days after the opinion has been served; and no motion to vacate or revise a decision may, except by special leave, be filed more than 30 days after the decision has been entered. Motions covered by this paragraph shall be separate and not joined to or made a part of any other motion.

[1] Herein redesignated (formerly Chapter III).

[2] Herein redesignated (formerly Part 711).

12. Section 701.20 is amended to read as follows:

§ 701.20 *Extensions of time.* (a) An extension of time (except for the absolute time limit on filing of the petition, see section 272 (a) and (c), Internal Revenue Code, and except as otherwise provided in the rules in this part) may be granted by the Court within its discretion upon a timely motion filed in accordance with the rules in this part setting forth good and sufficient cause therefor or may be ordered by the Court upon its own motion.

(b) If a motion is filed or an order issued in respect to the adequacy of any petition, the time prescribed in § 701.14 shall begin to run from the date upon which the Court takes final action with respect to the motion or the order unless the Court orders otherwise. The time for reply shall be similarly extended in the case of a motion or an order with respect to the adequacy of an answer unless the Court orders otherwise.

(c) Any extension of time for filing a brief shall correspondingly extend the time for filing all other briefs yet to be filed in that proceeding unless the Court orders otherwise. (See §§ 701.19, 701.22 and 701.35.)

For continuances see § 701.27 (c).

13. Section 701.21 is amended by adding the reference: "(See § 701.17 (a) (2).)"

14. Section 701.23 is amended to read as follows:

§ 701.23 *Substitution of parties; change of names*—(a) *Successor fiduciaries; certificate needed.* A motion shall be filed to substitute parties who are successor fiduciaries and shall be supported by a certificate of the proper court or official showing the appointment and qualification of the party who seeks to be substituted. (See §§ 701.4 and 701.19.)

(b) *Change in name; certificate needed.* A motion shall be filed to amend the pleadings to show a change in the names of a corporation or other party and shall be supported by a proper official certificate or copy of the decree or other document by which the change was effected, duly certified by the official having its custody. (See §§ 701.4 and 707.19.)

(c) *Waiver of certificate.* No certificate need be filed, unless required by Court order, if the respondent consents to a change as described in paragraphs (a) and (b) of this section.

(d) *Court order.* The Court, on motion of a party or upon its own motion, may order the substitution of proper parties upon the death of a petitioner, where a mistake in the name or title of a party appears, or for other cause.

15. Section 701.24 is amended to read as follows:

§ 701.24 *Counsel; appearance; withdrawal; substitution; changed address*—(a) *Entry of appearance.* (1) Counsel enrolled to practice before this Court may enter his appearance by subscribing the initial petition.

(2) Counsel may later enter his appearance only by filing in duplicate, an entry of appearance which shall be signed by counsel individually, shall show his mailing address, and shall state that he is enrolled to practice before this Court. Form 305 should be obtained from the Court and used.

(3) Counsel not properly enrolled to practice before this Court will not be recognized except by special leave of the Court granted at a hearing and then only where it appears that counsel can and will promptly become enrolled. (See §§ 701.2, 701.4 (f) and 701.7 (c) (4) (vii).)

(b) *Withdrawal of counsel.* Counsel of record in any proceeding desiring to withdraw, or any petitioner desiring to withdraw counsel of record, must file a motion with the Court requesting leave therefor reciting that notice thereof has been given to the client or to the counsel being withdrawn, as the case may be. The Court may, in its discretion, deny such motion.

(c) *Substitution of counsel.* New counsel may be substituted by conforming to the provisions of paragraphs (a) (2) and (b) of this section. (See §§ 701.2, 701.4, 701.19 and 701.27 (c).)

(See § 701.22 (b) in regard to substitution of "first counsel of record" for purposes of service.)

(d) *Change of address.* Notice of any change in the mailing address of either counsel or petitioner shall be filed promptly with the Court, in duplicate. Separate notices shall be filed for each proceeding.

Counsel may not act also as notary. (See § 701.7 (c) (4) (viii).)

16. Section 701.25 is eliminated as it is incorporated in § 701.27.

17. Section 701.26 is amended by changing the title to read: *"Place of hearing on merits; requests and designation"*, and by deleting from the section the sixth paragraph.

18. Section 701.27 is amended to read as follows:

§ 701.27 *Hearings; calendars; place, time, notice, attendance, continuances*—(a) *Calendars of hearings on motions and other procedural and subsidiary matters.* (1) If it is necessary for the Court to hear the parties on matters other than the merits, the proceeding will be listed for such hearing on a motion calendar which is called in Washington, D. C., unless good cause for holding the hearing elsewhere is shown in a timely motion to the Court. Ordinarily such calendars will be set for call at 9:30 a. m. (see § 701.1) on Wednesdays throughout the year, but due notice of the time and place in each case will be given to the parties by the Clerk. (See § 701.22.)

(2) *Attendance at hearings on motion calendar.* If a party fails to appear at the call of the motion calendar, the Court will hear the proceeding ex parte. However, a memorandum or brief stating the position of the petitioner upon the pending motion will be accepted, when the failure of the petitioner to appear is justified by distance, shortness of time, or other good reason stated in such memorandum or brief.

(3) Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(b) *Calendars of hearings on the merits.* (1) Each proceeding, when at issue, will be placed upon a calendar for hearing on the merits in accordance with § 701.26 and the Clerk, not less than 30 days in advance, will notify the parties of the place where and the date and time when it will be called.

(2) *Calendar call.* Each proceeding appearing on such a calendar will be called at the time and place scheduled. The cases will be called usually in the order listed, and counsel or the parties will state their estimate of the time required for trial or file stipulations in lieu of trial. The proceedings for trial will thereupon be heard in due course, but not necessarily in the order listed.

(3) *Attendance at hearings on the merits.* The unexcused absence of a party or his counsel when a proceeding is called for hearing on the merits will not be the occasion for delay. The proceeding may be dismissed for failure properly to prosecute or the hearing may proceed and the case be regarded as submitted on the part of the absent party or parties.

(4) The Court may require appearance for argument or it may accept briefs in lieu of personal appearance.

(c) *Continuances; motions; merits.* (1) Court action on proceedings set for hearing on motions or merits will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause and complies with all applicable rules in this part.

(2) Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance unless set forth in a motion filed promptly after the notice of hearing has been mailed or unless extenuating circumstances are shown which the Court deems adequate. (See § 701.20.)

(d) *Reserve calendar.* A proceding once at issue may, upon motion, be placed on an inactive list called the reserve calendar. Good cause must be shown, as, for example, that the proceeding will be governed by the decision in a case pending in a higher court. The proceeding may be placed later on a hearing calendar by motion of either party or by the Court on its own motion when the reason for inaction no longer exists.

19. Sections 701.28 and 701.29 are eliminated as they are incorporated in § 701.27.

20. Section 701.30 (b) is amended by inserting at the end of the sentence, the reference: "(See § 701.27 (a).)"

21. Section 701.35 is amended by adding to the first paragraph: "(See § 701.20 (c).)" and by adding to the second paragraph: "Briefs must be signed. (See § 701.4 (f).)"

22. Section 701.44 (c) is amended to read as follows:

§ 701.44 *Subpoenas.* * * *

(c) *For production of documents.* If evidence other than oral testimony is required, such as documents or written data, the application shall set forth in tabular form the specific matter to be produced and sufficient facts to indicate

that each item is reasonably necessary to establish the cause of action or defense of the applicant.

23. Section 701.48 (c) and (e) are amended to read as follows:

§ 701.48 *Commissioners of the Tax Court.* * * *

(c) Unless otherwise directed the parties shall have 30 days from the closing of proof in the case for filing proposed findings of fact. Such findings of fact shall be prepared in the manner and form prescribed in the first paragraph of § 701.35 (b).

Upon the filing by the parties of their proposed findings of fact, the commissioner shall prepare and file a report of his findings of fact based upon the evidence in the case, and a copy thereof shall be served upon each party.

Within 20 days from the filing of the commissioner's proposed findings of fact the parties shall file exceptions to all findings to which they object, which exceptions will be considered by the Division to which the case is assigned.

* * * * *

(e) Upon motion of either party made not later than at the time of filing the final brief, or upon its own motion, the Division to which the case is assigned may in its discretion direct oral argument and set a date therefor.

24. Section 701.50 is amended by changing the fifth sentence as follows: "The Clerk will serve a copy thereof upon the opposite party, will place the matter upon a motion calendar for argument in due course, and will serve notice of the argument upon both parties."

25. Section 701.51 numbering is given to a new section which read as follows:

§ 701.51 *Estate tax deduction developing after trial.* If the parties in an estate tax proceeding are unable to agree under § 701.50 or under a remand upon a deduction involving expenses incurred at or after the trial, the petitioner may move to reopen the case for further hearing on that issue provided it is raised in the petition or by amendment thereto.

26. Section 701.52 numbering is given to old § 701.51 which is amended to read as follows:

§ 701.52 *Preparation of record on review; costs.* (a) Immediately after the contents of a record on review have been settled or agreed to, the Clerk will notify the petitioner of the costs and charges for the preparation, comparison, and certification of said records; such charges to be determined in accordance with the provisions of Section 1133, Internal Revenue Code, and the act of September 27, 1944, 58 Stat. 743.

(b) No transcript will be certified and transmitted to the appellate court until the costs and charges therefor have been paid. (For name of payee, see § 701.7 (b).)

(c) A petitioner for review who requests the Clerk to certify but not to prepare documents for transmission to a United States Court of Appeals shall furnish the Clerk with the copies of the documents to be certified, if duplicates are not already in the record. (See §§701.4 (g) and 701.31 (b).)

(For statutory provisions relating to Court Review of Tax Court decisions see Subchapter B, Section 1140 et seq., I. R. C. For forms of bonds, see §§ 702.7 and 702.8. The rules of the appellate court to which the appeal is being taken should be consulted.)

27. In paragraph (b) of § 701.64, change the reference at the end of the first sentence by striking "§§ 701.4, 701.5, 701.7 and 701.8" and substituting "§§ 701.4, 701.6 and the pertinent parts of § 701.7." In subparagraph (8) amend by striking "§ 701.6 (h)" and substituting "§ 701.7 (c) (4) (viii)."

28. Section 702.2 is amended by changing "(See §§ 701.4, 701.5a, 701.6, 701.7, and 701.8)" to "(See §§ 701.4, 701.5, 701.6 and 701.7)."

29. Section 702.3 is amended by adding "[1]" to the title; by inserting under the title the following: The Tax Court of the United States; by inserting under the caption: Application for subpoena; and adding the footnote, as follows:

[1] Application for a subpoena duces tecum shall be so identified in its title, and shall be in form similar to the above, and shall set forth the additional information required by § 701.44 (c).

30. Section 702.5a is amended by adding to the title "[1]" and by adding the footnote, at the foot of the page, as follows:

[1] When the applicant seeks to take depositions upon written interrogatories the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed interrogatories. The taking of depositions upon written interrogatories is not favored, except when the depositions are to be taken in foreign countries, in which latter case any depositions taken must be upon written interrogatories, except as otherwise directed by the Court for cause shown. (See § 701.46.)

31. Section 702.7 is a new form, which reads as follows:

§ 702.7 *Bond with corporate surety.* The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of the Tax Court.

THE TAX COURT OF THE UNITED STATES
Washington, D. C.

Docket No. --

Petitioner
v.
Commissioner of Internal Revenue, Respondent

BOND

Know all men by these presents that we _____ as principal, and _____, as surety, are held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America, in the sum of $_____ (double the deficiency or such sum as the Tax Court has fixed upon petitioner's prior motion), to be paid to the said Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents. Sealed with our seals and dated the _____ day of _____, in the Year of our Lord One Thousand Nine Hundred and _____.

Whereas, the above named _____ is filing or is about to file with The Tax Court of the United States, a petition for review of the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years _____, by the United States Court of Appeals for the _____ Circuit to reverse the decision rendered in the above-entitled cause.

Now, therefore, the condition of this Obligation is such, that if the above-named _____ shall file its petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

_____

By _____
(Title)

Attest:
[CORPORATE SEAL] _____
(Secretary)

By _____
(Title)

Attest:
[CORPORATE SEAL] _____
(Secretary)

32. Section 702.8 is a new form, which reads as follows:

§ 702.8 *Bond; approved collateral.* A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular #154), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below:

THE TAX COURT OF THE UNITED STATES

Washington, D. C.

Docket No. --

Petitioner
v.
Commissioner of Internal Revenue, Respondent

BOND

Know all men by these presents that _____ is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of _____ ($_____) Dollars, to be paid to the said Commissioner of Internal Revenue and/or the United States of America, for the payment of which, well and truly to be made, the _____ _____ binds itself and its successors, firmly by these presents. Sealed with our seal and dated the _____ day of _____, in the year of our Lord One Thousand Nine Hundred and _____.

Whereas, the above-named _____ is filing or is about to file with The Tax Court of the United States, a petition for review of the said Court's decision in respect to the tax liability of the above petitioner for the taxable year or years _____ by the United States Court of Appeals for the _____ Circuit to reverse the decision rendered in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named _____ _____ shall file its petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obli-

gation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order, the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefore bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: _____ dollars ($_____), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows: _____ _____ _____ _____ which said bonds/notes have this day been deposited with the Clerk of The Tax Court of the United States and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of The Tax Court of the United States, authorizing and empowering him, as such attorney to collect or sell or transfer or assign the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

Title of coupon bonds/notes	Total face amount	Denomination	Serial No.	Interest dates

Title of bonds/notes registered in name of and assigned in blank	Total face amount	Denomination	Serial No.	Interest dates

such bonds/notes having been deposited by it, pursuant to authority conferred by Section 1126 of the Revenue Act of 1926, approved Feb. 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with the Commissioner of Internal Revenue and/or the United States under date of _____, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from an equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the _____, the corporation hereinabove named, by _____, (Name and title of officer) duly authorized to act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this _____ day of _____, 19__.

[CORPORATE SEAL] _____
By _____
(Title)
_____
(Secretary)
Approved by _____
(Judge, The Tax Court of the United States)

Date:

33. Section 702.8a is a new form, which reads as follows:

§ 702.8a *Power of attorney and agreement.*

Know all men by these presents, that _____, a corporation duly incorporated under the laws of the State of _____, and having its principal office in the city of _____, State of _____, in pursuance of a resolution of the Board of Directors of said corporation, passed on the _____ day of _____, 19____, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of The Tax Court of the United States as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, the property of said corporation, described as follows:

Title of coupon bonds/notes	Total face amount	Denomination	Serial No.	Interest dates

Title of bonds/notes registered in name of and assigned in blank	Total face amount	Denomination	Serial No.	Interest dates

such bonds/notes having been deposited by me (us) pursuant to authority conferred by Section 1126 of the Revenue Act of 1926, approved Feb. 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with the Commissioner of Internal Revenue and/or the United States under date of _____, which is hereby made a part thereof, and I (we) agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever

in the State of _____, personally appeared _____, (Name and title of officer) and for and in behalf of said _____, corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 19____.

[NOTARIAL SEAL] _____
(Notary Public)

My commission expires _____

34. Section 702.8b is a new form, which reads as follows:

§ 702.8b *Power of attorney and agreement by individual appellants.*

Know All Men by These Presents, that I, (we) _____, do hereby constitute and appoint the Clerk of The Tax Court of The United States as attorney for me (us), and in my (our) name to collect or to sell, assign and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, being my (our) property described as follows:

Title of coupon bonds/notes	Total face amount	Denomination	Serial No.	Interest dates

Title of bonds/notes registered in name of and assigned in blank	Total face amount	Denomination	Serial No.	Interest dates

my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed by (our) seal this _____ day of _____, 19__.

[SEAL] _____

Before me, the undersigned, a notary public within and for the county of _____, in the State of _____, personally appeared _____
(Name of appellant)
and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ____ day of _____, 19____.

[NOTARIAL SEAL] _____
(Notary Public)

My commission expires _____

Effective date: December 15, 1948.

(53 Stat. 160, sec. 504 (a), (c), 56 Stat. 957; 26 U. S. C. 1111)

By the Court.

[SEAL] BOLON B. TURNER,
Presiding Judge,
The Tax Court of the United States.

[F. R. Doc. 48-10328; Filed, Nov. 26, 1948; 8:49 a. m.]

TITLE 15—COMMERCE

Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce

[3d Gen. Rev. of Export Regs., Amdt. 23]

PART 372—GENERAL LICENSES

EXPORTATION OF CERTAIN COMMODITIES NOT INCLUDED ON POSITIVE LIST

Section 372.8 *General license "GRO"*, is amended in the following particulars:

Paragraph (b), the list of specified commodities exportable under general license "GRO" to all destinations, is amended in the following particulars:

1. The entry for certain paper products, Schedule B Nos. 473600–479900, is amended by changing the commodity description so that the entry reads as follows:

Dept. of Comm. Sched. B No.	*Commodity*
	Paper, related products, and manufactures:
473600–479900	Other paper products except the following: masonite insulating board, Schedule B Nos. 473600 and 473800; filter paper, 474100; and heavy fiber shipping containers of corrugated or solid container board, 478100.

This part of the amendment shall become effective as of November 23, 1948.

2. The entry for lamps and illuminating devices, except electric, Schedule B Nos. 979100–979900, is amended by changing the commodity description so that the entry reads as follows:

Dept. of Comm. Sched. B No.	*Commodity*
979100–979900	Nonelectric lamp and illuminating devices, except incandescent mantles.

This part of the amendment shall become effective as of November 16, 1948.

3. The following entries are added to the list:

Dept. of Comm. Sched. B No.	*Commodity*
	Meat products:
004000	Poultry and game, fresh or frozen.
004900	Sausage casings; (bladders, bungs, middles, rounds or weasands) other than hog or beef sausage casings (report hog sausage casings in 004600 and beef sausage casings in 004700).
	Other edible animal products:
009200	Eggs, in the shell.
009303	Egg albumen.
009305–009398	Other egg products, dried, frozen, or otherwise preserved.
	Furs and manufactures:
071100–074998	Furs, undressed, dressed or dyed.
075300	Fur wearing apparel.
075800	Fur waste, fur pieces, and damaged fur skins.
075900	Fur manufactures, n. e. s.
	Other inedible animals and animal products:
094205, 094298	Casein glue and other glue of animal origin.
099923, 099925	Mother-of-pearl shells, and other unmanufactured shells.
	Vegetables and preparations, edible:
124100–124990	Vegetables, and vegetable juices, canned.
125000	Pickles, cucumber.
125100	Ketchup, chili sauce, and other tomato table sauces.
125210	Mayonnaise and salad dressings.
125295	Olives.
125298	Sauces and relishes, n. e. s.
125300	Vinegar.
125600	Yeast, except liquid.
125901	Dehydrated soups.
125902	Dehydrated vegetables.
125998	Vegetable preparations, n. e. s. (report farinaceous substances in 125905 and soybean flour, edible in 125911).
	Nuts and preparations:
137400	Apricot and peach pits and kernels.
137610–137995	Other nuts and preparations, except peanuts (report peanuts shelled in 137510, and peanuts, not shelled in 137550).
	Sugar and related products:
161910–162900	Sugar (include raw sugar) and molasses.
164200–164700	Honey; glucose, liquid and dry (not pharmaceutical dextrose or glucose); and sirup for table use (report pharmaceutical dextrose or glucose in 813590).
	Drugs, herbs, leaves, and roots, crude:
220500	Ginseng.
220600	Mandrake root.
220988	Crude drugs, herbs, leaves, and roots, n. e. s. except belladonna leaves and roots, coca leaves, crude ergot, crude opium, digitalis leaves and seeds, ergot of rye, ipecac root, nux vomica, nux vomica seeds, stramonium flowering tops and dried leaves, pyrethrum roots, and jimson weed (report cascara bark in 220100, cinchona bark in 220904, hyoscymus henbane in 220911, pyrethrum (insect flowers) in 220919).
	Miscellaneous vegetable products, inedible:
299993	Vegetable ivory or tagua nuts.
	Cotton manufactures:
309000, 309120–312900.	Cotton wearing apparel, except work gloves, mitts, and gauntlets, Schedule B No. 309110.
	Wool manufactures:
366200	Carpets and rugs of wool.
367500–368950	Wool wearing apparel.
	Silk and manufactures:
374100–375900	Silk wearing apparel.
	Synthetic fibers and manufactures:
385201–385320	Outerwear, women's and children's.
385410	Women's and children's hosiery, nylon.
385490	Women's and children's hosiery, of other synthetic textiles.
385600	Men's socks.
385710–385770	Underwear and sleeping and lounging garments, knit or woven (men's, women's and children's included).
385850	Braids, fringes, and narrow trimmings, except hat braids (report hat braids of synthetic textiles in 394050).
	Miscellaneous textile products:
392100–394010, 394200–395800.	Corsets, brassieres, girdles, except rubber and rubberized (report rubber or rubberized corsets, etc. in 204300); neckties, hats, caps, etc., except hat braids, strips and sheets, wholly or partly of synthetic textiles, Schedule B No. 394050.
396300	Artificial or ornamental flowers, fruits, vegetables, grasses, grains, leaves, stems or parts thereof (all materials).
	Wood unmanufactured:
	Logs and hewn timber:
	Hardwoods:
400993	Other hardwood logs and hewn timber except balsa, beech, birch, maple, gum, oak, poplar, dogwood and persimmon.

Dept. of Comm. Sched. B No.	Commodity
	Sawmill products:
	Sawed timber, 5 inches or larger in least dimension:
407900	Hardwoods, not treated, except black walnut, mahogany, balsa, beech, birch, maple, gum, oak, poplar, dogwood and persimmon.
	Wood manufactures:
420110, 420150	Tight staves, new and used.
420300	Tight heading (set: two heads, top and bottom).
420500	Tight shooks (set: sufficient staves, headings, and hoops for one barrel, hogshead or cask).
421601, 421603	Veneers, except aero grade and Port Orford cedar veneers (report veneers, aero grade in 421605).
423100	Venetian blinds.
428500	Handles, plow and similar bent handles.
428600	Hoe, fork, shovel, broom, mop, and other long handles.
	Paper, related products, and manufactures:
472800	Toilet paper.
473100	Other container board, and boxboards folding, and set-up except V and W jute container board meeting military specifications and tube stock for ammunition and shell containers (report kraft container board in 473000).
473200	Bristols and bristol board.
473500	Sheathing and building paper.
	Glass and products:
523200–523600	Unfilled glass containers.
	Clay and products:
	Pottery (china, porcelain and earthenware included):
532000	Table and kitchen articles and utensils.
	Electrical machinery and apparatus:
706305–706555	Electric lamps, incandescent, fluorescent, and other vapor and non-filament lamps).
	Automobiles, parts, accessories, and service equipment:
792600	Automobile horns, hand and electric.
792700	Automobile accessories, n. e. s.
	Other vehicles and parts:
795000	Bicycles.
	Medicinal and pharmaceutical preparations:
812400–812790	Druggists' nonproprietary preparations, except ipecac, tincture of iodine, tincture of opium, coco-quinine, 812400; quinine sulfate in bulk form, 812730; quinine hydrochloride in bulk form, cinchona salts, quinidine alkaloid, salts and compounds, 812750; ergot, belladonna, stramonium, jimson weed, 812790.
814100, 814200	Household medicinal chemicals and pharmaceuticals in small packages.
814800–815500, 816000–818000.	Proprietary medicinal preparations except malaria, chill, and fever remedies, 815700.
	Pigments, paints, and varnishes:
840100, 840500, 842900–843250, 843800–844210.	Pigments, paints, and varnishes except zinc oxide, 841100; lithopone and all pigments containing lithopone, 841400; lampblack, 841900; carbon black, all grades 842300; red lead, dry, 842400; litharge, 842500; white lead, 842600, 842700; titanium dioxide and titanium pigments, 842800; basic sulfate of white lead, dry; cadmium lithopone, white; all chrome pigments; lead and all leaded pigments; chrome fluoride; and zinc pigments radioactivated, 842900; lead sublimed in oil, and red lead in oil, 843100; nitrocellulose and other cellulosic lacquers, 843310 and 843410; thinners for nitrocellulose and other cellulosic lacquers, 843510; paints and stains containing radioactivated materials, 843800.
	Toys, athletic and sporting goods:
942000–945000	Athletic and sporting goods.
	Miscellaneous commodities, n. e. s.
961000	Paintings, etchings, engravings, statuary, and antiques (except plaster of paris statuary which is classified under 548700).
982700	Combs, except wholly of rubber (report rubber combs under 205800).
982800, 982900	Tobacco pipes (all materials), and other smoker's articles except pocket and electric lighters (report pocket lighters of all materials except metal in 962900; pocket lighters of metal except solid gold or platinum in 962600; pocket lighters of gold or platinum in 962000; and electric lighters in 707398).
983100	Umbrellas and parasols.
984098	Notions, cheap novelties, n. e. s. except slide fasteners (zippers).
985300	Shoe findings, except leather and rubber (report shoe findings of leather and rubber under appropriate leather classifications (060000–069900) or appropriate rubber classifications (201400–209990) according to type of findings).
987100	Coin-operated commodity-vending machines.
990000	Household and personal effects.

This part of the amendment shall become effective as of November 16, 1948.

(Sec. 6, 54 Stat. 714; 55 Stat. 206; 56 Stat. 463; 58 Stat. 671; 59 Stat. 270; 60 Stat. 215; 61 Stat. 214; 61 Stat. 321; Pub. Law 395, 80th Cong.; 50 U. S. C. App. and Sup. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Dated: November 22, 1948.

FRANCIS MCINTYRE,
Assistant Director,
Office of International Trade.

[F. R. Doc. 48–10333; Filed, Nov. 26, 1948; 8:57 a. m.]

[3d Gen. Rev. of Export Regs., Amdt. P. L. 11]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

SEEDS EXCEPT OILSEEDS AND SAWMILL PRODUCTS (LUMBER)

Section 399.1 *Appendix A—Positive List of Commodities,* is amended in the following particulars:

1. The following commodity is added to the Positive List:

Dept. of Comm. Sched. B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits
240600	Seeds except oilseeds: Grass and field seeds: Timothy	Pound	SEED 2	25

Shipments of the above commodity removed from general license which were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to an actual order for export prior to the effective date of this part of the amendment may be exported under the previous general license provisions.

This part of the amendment shall become effective as of November 29, 1948.

2. The following commodity is deleted from the Positive List:

Dept. of Comm. Sched. B No.	Commodity
	Sawmill products (lumber):
	Boards, planks and scantlings, less than 5" in least dimensions:
	Hardwoods:
412400	Oak.

This part of the amendment shall become effective as of November 22, 1948.

(Sec. 6, 54 Stat. 714; 55 Stat. 206; 56 Stat. 463; 58 Stat. 671; 59 Stat. 270; 60

Stat. 215; 61 Stat. 214; 61 Stat. 321; Pub. Law 395, 80th Cong.; 50 U. S. C. App. and Sup. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Dated: November 22, 1948.

FRANCIS MCINTYRE,
Assistant Director,
Office of International Trade.

[F. R. Doc. 48-10332; Filed, Nov. 26, 1948; 8:56 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 526]

CALIFORNIA

TRANSFERRING JURISDICTION OVER OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described parcel of land, title to which has been acquired by the United States, comprising the Post Office Site at Long Beach, California, is reported to be subject to drainage of its oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said parcel of land; and

Whereas, in order to facilitate such action, it is advisable that jurisdiction over the oil and gas deposits in such land be transferred to the Department of the Interior; and

Whereas such transfer has the concurrence of the Administrator, Federal Works Agency:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described parcel of land is hereby transferred from the Federal Works Agency to the Department of the Interior:

A tract of land lying and being in the City of Long Beach, County of Los Angeles, State of California, bounded on the West by American Avenue, on the North by a 10-foot public alley known as Roble Way, on the East by a 16-foot public alley known as Alamo Court and on the South by Third Street and comprising all of Lots 18, 20, 22, 24, 26 and 28 in Block 78 in the said City of Long Beach, Los Angeles County, California, as per map recorded in Book 19, pages 91 et seq., of Miscellaneous Records of said county.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such land.

3. The jurisdiction of the Department of the Interior over such land shall be subject to the primary jurisdiction of the Federal Works Agency over the land for Post Office purposes.

4. All moneys received as royalties under leases, or otherwise, on account of the oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

5. Any lease which may issue involving the oil and gas rights in the lands described herein shall contain a provision that no use shall be made of the surface of the land in connection with the removal of such deposits.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

NOVEMBER 17, 1948.

[F. R. Doc. 48-10311; Filed, Nov. 26, 1948; 8:46 a. m.]

[Public Land Order 527]

TEXAS

TRANSFERRING JURISDICTION OVER OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described parcel of land, title to which has been acquired by the United States, comprising the Naval Auxiliary Airfield No. 55, Corpus Christi, Texas, is reported to be subject to drainage of its oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said parcel of land; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such land be transferred to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Navy:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943 it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described parcel of land is hereby transferred from the Department of the Navy to the Department of the Interior:

All of the lands situated and being in Kleberg County, Texas, and more particularly described as follows:

Beginning at the northwest corner of Lot 44, Section 25, Theo. F. Koch Subdivision Riviera Lands No. 1 for the northwest corner of this tract; thence, along the north line of said Lot 44, N. 88°02' E. 1320.0 feet to the northwest corner of same; thence continuing easterly along the north line of Lot 43 of said Section 25 to a point, the northeast corner of said Lot 43; thence, southerly along the east line of said Lot 43 and the east line of Lots 48 and 52 of said Section 25 to the southeast corner of said Lot 52 on the shoreline of Laguna de los Olinos; thence, southwesterly along the south lines of Lot 52 and Lot 51 of said Section 25 and following along said shoreline with its meanderings to a point which is the southwest corner of said Lot 51 and the southeast corner of Lot 50 of said Section 25; thence, along the south line of said Lot 50 and the meanderings of the shoreline of said Laguna de los Olinos, S. 66°15' W., 486.9 feet to a point; thence following the shoreline of said Laguna de los Olinos with its meanderings to include the peninsula as follows: S. 66°15' W., 225.5 feet to a point; thence S. 61°45' W., 1300.0 feet to a point; thence S. 65°45' W., 800.0 feet to a point; thence N. 45°00' E., 300.0 feet to a point; thence N. 67°45' E., 1300.0 feet to a point; thence N. 37°15' W., 332.1 feet to a point; thence, leaving the shoreline N. 2°02' W., 3923.2 feet to the place of beginning and containing a total of 221.50 acres, as shown on drawing entitled "Location Sketch for Outlying Field No. 55 to Auxiliary Field P-4, Kingsville, Texas," dated February 26, 1943, filed with the declaration of taking in condemnation proceedings entitled "United States *v.* 221.50 acres of land, more or less, in Kleberg County, Texas, W. A. Govett, et al", Civil No. 228, in the District Court of the United States for the Southern District of Texas, Corpus Christi Division.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such land.

3. The jurisdiction of the Department of the Interior over such land shall be subject to the primary jurisdiction of the Department of the Navy over the land for naval purposes.

4. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

5. Any lease which may be issued involving the oil and gas rights in the lands described herein shall contain a provision reserving to the United States the right to revoke the same in the event the field should be required for war or national defense purposes.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

NOVEMBER 17, 1948.

[F. R. Doc. 48-10312; Filed, Nov. 26, 1948; 8:46 a. m.]

[Public Land Order 528]

ARIZONA

REVOKING PUBLIC LAND ORDER NO. 22 OF AUGUST 6, 1942, WITHDRAWING PUBLIC LANDS FOR USE OF WAR DEPARTMENT AS A BOMBING RANGE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 22 of August 6, 1942, withdrawing public lands for the use of the War Department as a bombing range, which was revoked in part by Public Land Order No. 54 of November 5, 1942, is hereby revoked as to the remaining public lands hereinafter described.

The jurisdiction over and use of such lands granted to the War Department by Public Land Order No. 22 shall cease upon the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior and any other Department or agency of the Federal Government according to their respective interests then of record.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on January 19, 1949. At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from January 19, 1949, to April 20, 1949, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a), as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279–283), subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2).

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from December 30, 1948, to January 18, 1949, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on January 19, 1949, shall be treated as simultaneously filed.

(c) *Date for non-preference-right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on April 21, 1949, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference-right filings.* Applications by the general public may be presented during the 20-day period from April 15, 1949, to April 20, 1949, inclusive, and all such applications, together with those presented at 10:00 a. m. on April 21, 1949, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office at Phoenix, Arizona shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254), and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office at Phoenix, Arizona.

The lands affected by this order are described as follows:

GILA AND SALT RIVER MERIDIAN

T. 6 S., R. 2 E.,
Sec. 25, lots 7, 8, 17, 18, 19, 20, S½NW¼, SW¼.
T. 10 S., R. 6 E.,
Sec. 30.

The areas described aggregate 1118.20 acres.

These public lands are generally level desert.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

NOVEMBER 17, 1948.

[F. R. Doc. 48-10310; Filed, Nov. 26, 1948; 8:46 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

Subchapter C—Water Carriers

[Ex Parte No. 146]

PART 315—EXEMPTION OF CONTRACT CARRIER OPERATIONS

OIL FIELD EQUIPMENT, MARSHLANDS, LOUISIANA AND TEXAS

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 17th day of November A. D. 1948.

It appearing, that by order of August 26, 1941, (49 CFR, Cum. Supp., 315.1) as subsequently modified, (49 CFR, 1944 and 1947 Supps., 315.1) contract carriers by water are exempted from the requirements of Part III of the Interstate Commerce Act, until the further order of the Commission, insofar as they are engaged in leasing or chartering vessels for the purpose of transporting machinery, materials, supplies, and equipment incidental to, or used in, the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum, to and from points in the marshland oil fields of Louisiana and Texas;

It further appearing, that contract carriers by water lease or charter vessels for the purpose of transporting machinery, materials, supplies, and equipment incidental to, or used in, the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum, to and from points in the marshland oil fields of Alabama, Florida, and Mississippi; and that on April 20, 1948, The American Waterway Operators, Inc., petitioned the Commission to amend the said order of August 26, 1941, to exempt the operations of such contract carriers by water, which petition is supported by a number of water carriers and oil companies;

And it further appearing, that such operations by contract carriers by water are not competitive with other means of transportation or with common carriers by water, that such contract carriers by water are not engaging in destructive competitive practices, and that the regulation of such class of contract carriers by water is not necessary to effectuate the national transportation policy of the act:

It is ordered, That the above-entitled proceeding be, and it is hereby, reopened for further consideration. *It is further ordered,* That:

§ 315.1 *Oilfield equipment, Gulf States marshlands.* Contract carriers by water, insofar as they engage in leasing or chartering vessels for the purpose of transporting machinery, materials, supplies, and equipment incidental to, or used in, the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum, to and from points in the marshland oil fields of Alabama, Florida, Mississippi, Louisiana and Texas be, and they are hereby, exempted from the requirements of Part III of the Interstate Commerce Act until the further order of the Commission.

And it is further ordered, That the said order of August 26, 1941, as subsequently modified, be, and it is hereby, superseded and canceled as of the date this order becomes effective; and that this order shall take effect on December 20, 1948.

(54 Stat. 930; 49 U. S. C. 902 (e))

By the Commission, Division 4.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 48-10329; Filed, Nov. 26, 1948; 8:51 a. m.]

Chapter II—Office of Defense Transportation

PART 500—CONSERVATION OF RAIL EQUIPMENT

SHIPMENTS OF CITRUS FRUITS

CROSS REFERENCE: For an exception to the provisions of § 500.72 see Part 520 of this chapter, *infra.*

[General Permit ODT 18A, Rev. 47]

PART 520—CONSERVATION OF RAIL EQUIPMENT; EXCEPTIONS, PERMITS AND SPECIAL DIRECTIONS

SHIPMENTS OF CITRUS FRUITS

Pursuant to Title III of the Second War Powers Act, 1942, as amended, Executive Order 8989, as amended, Executive Order 9729, as amended, Executive Order 9919, and General Order ODT 18A, Revised, as amended, it is hereby ordered, that:

§ 520.548 *Shipments of citrus fruits.* Notwithstanding the restrictions contained in § 500.72 of General Order ODT 18A, Revised, as amended (11 F. R. 8229, 8829, 10616, 13320, 14172; 12 F. R. 1034, 2386; 13 F. R. 2971), or in items numbered 255 to 360, inclusive, of Special Direction ODT 18A–2A, as amended (9 F. R. 118, 4247, 13008; 10 F. R. 2523, 3470, 14906; 11 F. R. 1358, 13793, 14114; 12 F. R. 8025; 13 F. R. 1831, 3208, 3763, 4151, 5074, 5812), any person may offer for transportation and any rail carrier may accept for transportation at point of origin, forward from point of origin, or load and forward from point of origin, any carload freight consisting of any citrus fruit or fruits, when such carload freight is loaded to a weight not less than the applicable tariff carload minimum weight.

This General Permit ODT 18A, Revised–47, shall become effective November 25, 1948, and shall expire February 28, 1949.

(54 Stat. 676, 55 Stat. 236, 56 Stat. 177, 58 Stat. 827, 59 Stat. 658, 60 Stat. 345, 61 Stat. 34, 321, Pub. Laws 395, 606, 80th Cong.; 50 U. S. C. App. 633, 645, 1152; E. O. 8989, Dec. 18, 1941, 6 F. R. 6725; E. O. 9389, Oct. 18, 1943, 8 F. R. 14183; E. O. 9729, May 23, 1946, 11 F. R. 5641; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Issued at Washington, D. C., this 23d day of November 1948.

J. M. JOHNSON,
Director,
Office of Defense Transportation.

[F. R. Doc. 48–10331; Filed, Nov. 26, 1948; 8:51 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Misc. 19623]

WASHINGTON

RESTORATION ORDER NO. 1244 UNDER FEDERAL POWER ACT

NOVEMBER 19, 1948.

Pursuant to the determination of the Federal Power Commission (DA–100, Washington) and in accordance with 43 CFR 4.275 (a) (16) (Departmental Order No. 2238 of August 16, 1946, 11 F. R. 9080), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the land hereinafter described, having been withdrawn for Power Site Classification No. 215 on December 6, 1928, is hereby restored for mining purposes only, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075), as amended by the act of August 26, 1935 (49 Stat. 846, 16 U. S. C. 818), and subject to the stipulation that if and when the land is required wholly or in part for purposes of power development, any structures or improvements placed thereon which shall be found to interfere with the proposed development shall be removed or relocated as may be necessary to eliminate interference with the power development without expense to the United States, its permittees or licensees:

WILLAMETTE MERIDIAN

T. 21 N., R. 14 E.,
Sec. 8, NE¼NE¼.

The area described contains 40 acres.

This order shall become effective at 10:00 a. m. on January 21, 1949.

MARION CLAWSON,
Director.

[F. R. Doc. 48–10313; Filed, Nov. 26, 1948; 8:46 a. m.]

DEPARTMENT OF COMMERCE

Office of Industry Cooperation

PROPOSED VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MANUFACTURE OF ORE CARS

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held on Tuesday, December 7, 1948, at 2:30 p. m., e. s. t., in the Auditorium on the fifth floor of the National Archives Building, Pennsylvania Avenue between Seventh and Ninth Streets NW., Washington, D. C., for the purpose of affording to industry, labor and the public generally an opportunity to present their views with respect to the proposed voluntary plan, under Public Law 395, 80th Congress, for the allocation of steel products for the manufacture of ore cars. A draft of the plan is set forth in Exhibit A hereto.

In view of the essentiality of the program represented by this plan, it is proposed to provide for continued assistance beyond February 28, 1949, which will be the termination date specified in the plan itself, as required by Public Law 395. Provision for continuation consists of two procedures developed in consultation with the Attorney General. First, the termination provisions in the plan provide for extension beyond next February in the event that the authority now contained in Public Law 395 is appropriately extended. Second, the Secretary of Commerce proposes to make a request for unilateral action by participants in carrying on the program after that date under the "carry-over" provisions of Public Law 395. A draft of the proposed request is set forth as Exhibit B hereto.

Both Exhibits A and B are subject to revision at or after the public hearing.

The proposed plan has been formulated after consulting with representatives of the industries involved and of the interested government agencies, including the Munitions Board of the National Military Establishment.

Any person desiring to participate in said public hearing should file a written notice of appearance with the Director of the Office of Industry Cooperation, Room 5847, Department of Commerce Building, Washington 25, D. C., not later than 5 p. m., e. s. t., on Friday, December 3, 1948. Persons desiring to present written statements or memoranda should submit them, in triplicate, at the hearing.

[SEAL] CHARLES SAWYER,
Secretary of Commerce.

EXHIBIT A—PLAN

PROPOSED VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MANUFACTURE OF ORE CARS

[Preamble—To be inserted in final draft]

1. *What This Plan Does.* Manganese has been designated by the Munitions Board as a strategic and critical material and a program for the procurement of that material for stockpiling has been established in accordance with applicable law, including Public Laws 520 and 521, 79th Congress. In furtherance of that procurement program and in aid of American industry, this Plan sets up the procedure under which steel producers (hereinafter called Producers) agree voluntarily to make certain steel products available, at producers' mills, to Canadian Car and Foundry Company, Limited, Montreal, Canada (hereinafter called the Participating Manufacturer), for use in the manufacture of 2,000 ore cars (bogie wagons) for the Union of South Africa Railways, to be used in the transportation of manganese-bearing ore from South African mines to tidewater.

2. *Agreement by Steel Producers.* During the period this Plan remains in effect, Producers will make available, out of their own production or that of their producing subsidiaries or affiliates, to the Participating Manufacturer, a total of 2,576 net tons of steel products per month, distributed by types approximately as follows:

Type:	*Net tons per month*
Ship channels	380
Bulb Angles	154
Sheets 58" wide	296
Plates—ASTM	962
Plates—U. S. S. *Man-ten*	784
Total net tons per month	2,576

Producers will, from time to time, however, upon request of the Secretary of Commerce, give consideration to making additional quantities available, or to accelerating the monthly deliveries provided for above.

3. *Determination of Quantities to be Furnished by Respective Producers.* Unless otherwise specified in its acceptance of this Plan, the quantities to be made available by each Producer, as its commitment under this Plan, will be such as the Secretary of Commerce, after consulting the Steel Task Committee of the Office of Industry Cooperation of the Department of Commerce, determines to be fair and equitable. Producers will take credit against their commitments under this Plan only for quantities delivered to the Participating Manufacturer on orders certified in accordance with paragraph 9 below.

4. *Contractual Arrangements.* Such products will be made available under such contractual arrangements as may be made by the respective Producers, or their producing subsidiaries and affiliates, with the Participating Manufacturer. This plan does not authorize nor approve any fixing of prices, and participation in this Plan does not affect the prices of terms and conditions on which any steel products are actually sold and delivered.

5. *Limitations as to Types, Sizes and Quantities.* A Producer need make available under this Plan only those products which are

within the type and size limitations of the mill or mills which it may select for the fulfillment of its commitment under this Plan. The quantities which it may have undertaken to make available in any month may be reduced, or at its option their delivery may be postponed, in direct proportion to any production losses during the month due to causes beyond its control.

6. *Reports from Steel Producers.* Each Producer will, if requested by the Office of Industry Cooperation of the Department of Commerce (subject to approval of the Bureau of the Budget under the Federal Reports Act of 1942), submit to that office periodic reports of the total quantities, by types, of products shipped, and accepted for shipment, under the Plan.

7. *Reports from Participating Manufacturer.* The Participating Manufacturer will submit such reports as may be requested from time to time by the Secretary of Commerce (subject to the approval of the Bureau of the Budget under the Federal Reports Act of 1942).

8. *Obligations of Participating Manufacturer.* By participation in this Plan, the Participating Manufacturer shall be obligated as follows: To use all products obtained under this Plan solely for and in the manufacture of ore cars for Union of South Africa Railways; not to resell nor transfer any products so obtained under this Plan in the form received by the said Participating Manufacturer; and not to build up, beyond current needs, any inventories of products obtained under this Plan. If the Partcipating Manufacturer becomes unable to use, for the purposes of this Plan, any products obtained under the Plan, it shall be further obligated to hold them subject to such disposition (including return to the producer from whom purchased) as shall be authorized by the Office of Industry Cooperation of the Department of Commerce.

9. *Procedure for Placing Orders Under This Plan.* Purchase orders under this Plan are to be placed with participating Producers, or their producing subsidiaries or affiliates. Each such purchase order shall bear the following certification by the Participating Manufacturer:

DEPARTMENT OF COMMERCE VOLUNTARY PLAN, UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MANUFACTURE OF ORE CARS

The undersigned certifies to the seller and to the Department of Commerce that the products specified in this order will be used solely for and in the manufacture of ore cars for Union of South Africa Railways, and that this order is placed under, and in strict compliance with, the above Voluntary Plan, with which the undersigned is familiar and in which the undersigned is a participant.

CANADIAN CAR AND FOUNDRY COMPANY, LIMITED,

By _____
(Title of duly authorized officer)

_____
(Date)

10. *Procedure for, and Effect of, Becoming a Participant.* After approval of this Plan by the Attorney General and by the Secretary of Commerce, and after requests for compliance with it have been made of steel producers and of the participating Manufacturer by the Secretary of Commerce, any such producer, and the Participating Manufacturer, may become a participant in this Plan by advising the Secretary of Commerce, in writing, of its acceptance of such request. Such requests for compliance will be effective for the purpose of granting certain immunity from the antitrust laws and the Federal Trade Commission Act, as provided in Section 2 (c) of Public Law 395, only with respect to such participants as notify the Secretary of Commerce in writing that they will comply with such requests.

11. *Effective Date and Duration.* This Plan shall become effective upon the date of its final approval by the Secretary of Commerce. It shall cease to be effective at the close of business on February 28, 1949, unless the time limitation of March 1, 1949 now specified in Section 2 (b) of Public Law 395, 80th Congress, is extended or otherwise changed by legislative action in a form which permits continuation of this Plan, in which event this Plan shall thereupon automatically continue in effect through September 30, 1949 (or through the date specified in such legislative action if a date earlier than September 30, 1949 is so specified). However, the Plan may be terminated on such earlier date as may be determined by the Secretary of Commerce, upon not less than 60 days notice by letter, telegram, or publication in the FEDERAL REGISTER.

12. *Withdrawal from Plan.* Any Producer or the Participating Manufacturer may withdraw from this Plan by giving not less than 60 days written notice to the Secretary of Commerce.

13. *Clarifying Interpretations.* Any interpretation issued by the Secretary of Commerce (after consultation with the Attorney General), in writing, to clarify the meaning of any terms or provisions in this Plan shall be binding upon all participants notified of such interpretation.

[To be signed by the Attorney General and the Secretary of Commerce upon approval.]

EXHIBIT B—REQUEST

PROPOSED REQUEST UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MANUFACTURE OF ORE CARS

The Secretary of Commerce, pursuant to the authority vested in him by Public Law 395, 80th Congress, and Executive Order 9919, after consultation with representatives of the steel producing industry, and after expression of the views of industry, labor and the public generally at an open public hearing held on December 7, 1948, has determined that, in order to carry out the program begun under the voluntary plan entered into by steel producers to furnish certain steel products for the manufacture of ore cars, it will be necessary, and is practicable and appropriate to the successful carrying out of the policies set forth in said Public Law 395, that steel producers make further deliveries of steel products to such manufacturer after the expiration of the plan on February 28, 1949.

Therefore, the Secretary of Commerce, in accordance with subsections 2 (c) and 2 (f) of Public Law 395, 80th Congress, and with the approval of the Attorney General, hereby requests:

1. That steel producers participating in the abovementioned voluntary plan continue to make approximately 2,576 net tons of steel products available monthly, during the period March 1, 1949 through June 30, 1949, on certified orders from Canadian Car and Foundry Company, Limited; and that such products be made available in accordance with delivery procedures established under the said plan.

2. That Canadian Car and Foundry Company, Limited, place purchase orders hereunder only for the quantities and types of steel products established for it by the Secretary of Commerce; that it put identifying certifications on such purchase orders; and that it use all steel products obtained hereunder solely for the manufacture of ore cars for Union of South Africa Railways.

In the event that an amendment to the abovementioned voluntary plan extending its effectiveness beyond February 28, 1949, takes effect pursuant to appropriate legislation, this request will be superseded by said extended plan.

[To be signed by the Attorney General and the Secretary of Commerce upon approval.]

[F. R. Doc. 48-10417; Filed, Nov. 26, 1948; 11:18 a. m.]

VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS FOR ALLOCATION OF STEEL PRODUCTS FOR OIL TANKERS

NOTICE OF PUBLIC HEARING ON PROPOSED CONTINUATION AND OTHER MATTERS

Notice is hereby given that a public hearing will be held on Wednesday, December 8, 1948, at 2:00 p. m., e. s. t., in the Auditorium on the fifth floor of the National Archives Building Pennsylvania Avenue, between Seventh and Ninth Streets, NW., Washington, D. C., for the purpose of affording to industry, labor and the public generally an opportunity to present their views with respect to (1) the proposed continuation, beyond February 28, 1949, of the voluntary plan, under Public Law 395, 80th Congress, for the allocation of steel products for oil tankers, approved by the Attorney General on September 17, 1948 and by the Secretary of Commerce on September 21, 1948 and subsequently published in the FEDERAL REGISTER (13 F. R. 5868) and (2) several proposed changes in the operational details of the plan.

The proposed continuation involves two procedures. One would remain effective if the present authority contained in Public Law 395 is not extended. The other would become effective if the present authority contained in Public Law 395 is appropriately extended. The two procedures are represented by documents attached hereto as Exhibits A and B. They are in draft form and are subject to revision at or after the public hearing.

Under one procedure (Exhibit B), it is proposed that the Secretary of Commerce will make a request, with the approval of the Attorney General, for unilateral action by steel producers in continuing deliveries for the program during the six-month period of March 1, 1949 through August 31, 1949, in accordance with section 2 (f) of Public Law 395.

Under the other procedure (Exhibit A), it is proposed to amend the existing plan to provide that, in the event of statutory extension, the plan itself will automatically continue in effect during the seven-month period March 1, 1949, through September 30, 1949, which would round out the full third calendar quarter.

Exhibit A also contains the proposed changes in the operational details of the plan.

The proposed actions have been formulated after consulting with representatives of the steel producing and oil tanker industries and with interested Government agencies, including the Department of the Interior, the National Military Establishment, and the Department of Justice.

Any person desiring to participate in the public hearing should file a written notice of appearance with the Director of the Office of Industry Cooperation, Room 5847, Department of Commerce Building, Washington 25, D. C., not later

than 5 p. m., e. s. t., on Friday, December 3, 1948. Persons desiring to present written statements or memoranda should submit them, in triplicate, at the hearing.

[SEAL] CHARLES SAWYER,
Secretary of Commerce.

EXHIBIT A—AMENDMENT

PROPOSED AMENDMENT TO VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS FOR ALLOCATION OF STEEL PRODUCTS FOR OIL TANKERS

The Secretary of Commerce, pursuant to the authority vested in him by Public Law 395, 80th Congress, and Executive Order 9919, after consultation with representatives of the steel producing industry and the oil tanker building and repairing industry, and after expression of the views of industry, labor and the public generally at an open public hearing held on December 8, 1948, has determined that, in order to carry out the program begun under the voluntary plan (13 F. R. 5863) entered into by steel producers to furnish certain steel products to builders and repairers of oil tankers, it will be necessary, and is practicable and appropriate to the successful carrying out of the policies set forth in the said Public Law 395, and (1) steel producers make further deliveries of steel products to such builders and repairers beyond February 28, 1949 and (2) that certain changes be made in the existing plan to cover this and other matters.

Therefore, the above-mentioned voluntary plan is amended as follows:

1. By adding the following at the end of paragraph 7 (*Reports from Participating Builders*):

"In addition to the other reports provided for in this paragraph, each participating builder will, not later than the first day of each month, submit to the Secretary of Commerce, by letter or telegram, a report on the quantities and kinds of steel products covered by certified orders placed by it under this plan and accepted by participating steel producers for delivery in the second succeeding month."

2. By inserting the following after the first sentence of paragraph 9 (*Procedure for Placing Orders under this Plan*):

"Purchase orders shall be placed not less than 60 days before the first of the month in which delivery is required."

3. By inserting the following at the end of paragraph 8 (*Obligations of Participating Builders*):

"Participation in the benefits of this plan shall at all times be contingent upon each participating Builder's continued strict compliance with the provisions hereof. In the event of any actual or prospective non-compliance by any participating Builder, the Secretary of Commerce may, after written notice to the participating Builder, take such action as he deems warranted with respect to the Builder's participation in the plan, including partial or total suspension or termination of participation privileges and notification to the participating steel producers not to make any or certain further shipments under the plan to such Builder."

4. By inserting the following sentence after the certification in paragraph 9 (*Procedure for Placing Orders under this Plan*):

"In addition, certifications on orders placed after December 31, 1948 shall carry the following additional sentence:

'The undersigned further certifies that the quantities ordered herewith, when added to all other quantities certified by the undersigned under the plan for the same delivery month, do not exceed the undersigned's allocations under the plan for that month.'"

5. By adding the following at the end of paragraph 11 (*Effective Date and Duration*):

"However, if the time limitation of March 1, 1949 now specified in subsection 2 (b) of Public Law 395 is extended or otherwise changed by legislative action in a form which permits the continuation of this plan, the plan shall thereupon automatically continue in effect through September 30, 1949 (or through the date specified in such legislative action if a date earlier than September 30, 1949 is so specified), subject to other applicable provisions in this plan regarding earlier termination by the Secretary of Commerce and withdrawal by any individual participant. During the continuation period, steel products shall be made available at the rate of approximately 40,380 net tons per month, distributed by types as specified in paragraph 2 of this plan."

After approval of this amendment by the Attorney General and by the Secretary of Commerce, and after any steel producer, oil tanker builder, or oil tanker repairer has made a written acceptance of a request by the Secretary of Commerce for compliance herewith, this amendment shall become effective as to such steel producer, such builder, or repairer and shall be subject to the terms and conditions set forth in the original voluntary plan.

[To be signed by the Attorney General and the Secretary of Commerce upon approval.]

EXHIBIT B—REQUEST

PROPOSED REQUEST UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR OIL TANKERS

The Secretary of Commerce, pursuant to the authority vested in him by Public Law 395, 80th Congress, and Executive Order 9919, after consultation with representatives of the steel producing industry and the oil tanker building and repairing industry, and after expression of the views of industry, labor and the public generally at an open public hearing held on December 8, 1948, has determined that, in order to carry out the program begun under the voluntary plan (13 Federal Register 5868) entered into by steel producers to furnish certain steel products to builders and repairers of the oil tankers (as defined in the plan), it will be necessary, and is practicable and appropriate to the successful carrying out of the policies set forth in said Public Law 395, that steel producers make further deliveries of steel products to such builders after the expiration of the plan on February 28, 1949.

Therefore, the Secretary of Commerce, in accordance with subsections 2 (c) and 2 (f) of Public Law 395, 80th Congress, and with the approval of the Attorney General, hereby requests:

1. That steel producers participating in the above-mentioned voluntary plan continue to make approximately 40,380 net tons of steel products available monthly, during the period March 1, 1949 through August 31, 1949, on certified orders from builders for construction and repair of oil tankers; and that such products be made available in accordance with delivery procedures established under the said plan.

2. That builders and repairers of oil tankers place purchase orders hereunder only for the quantities and types of steel products established for them individually by the Secretary of Commerce; that they put identifying certifications on such purchase orders; and that they use all steel products obtained hereunder solely for the construction or repair of oil tankers.

In the event that an amendment to the above-mentioned voluntary plan extending its effectiveness beyond February 28, 1949 takes effect pursuant to appropriate legislation, this request will be superseded by said extended plan.

[To be signed by the Attorney General and the Secretary of Commerce upon approval]

[F. R. Doc. 48-10418; Filed, Nov. 26, 1948; 11:18 a. m.]

PROPOSED VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MINING MACHINERY

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held on Tuesday, December 7, 1948, at 10:00 a. m., e. s. t., in the Auditorium on the fifth floor of the National Archives Building, Pennsylvania Avenue between Seventh and Ninth Streets NW., Washington, D. C., for the purpose of affording to industry, labor and the public generally an opportunity to present their views with respect to the proposed voluntary plan, under Public Law 395, 80th Congress, for the allocation of steel products for mining machinery. A draft of the plan is set forth in Exhibit A hereto.

In view of the essentiality of the program represented by this plan, it is proposed to provide for continued assistance beyond February 28, 1949, which will be the termination date specified in the plan itself, as required by Public Law 395. Provision for continuation consists of two procedures developed in consultation with the Attorney General. First, the termination provisions in the plan provide for extension beyond next February in the event that the authority now contained in Public Law 395 is appropriately extended. Second, the Secretary of Commerce proposes to make a request for unilateral action by participants in carrying on the program after that date under the "carry-over" provisions of Public Law 395. A draft of the proposed request is set forth as Exhibit B hereto.

Both Exhibits A and B are subject to revision at or after the public hearing.

The proposed plan has been formulated after consulting with representatives of the steel and mining machinery industries and of the interested government agencies, including the Department of the Interior and the National Military Establishment.

Any person desiring to participate in said public hearing should file a written notice of appearance with the Director of the Office of Industry Cooperation, Room 5847, Department of Commerce Building, Washington 25, D. C., not later than 5 p. m., e. s. t., on Friday, December 3, 1948. Persons desiring to present written statements or memoranda should submit them, in triplicate, at the hearing.

[SEAL] CHARLES SAWYER,
Secretary of Commerce.

EXHIBIT A—PLAN

PROPOSED VOLUNTARY PLAN UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MINING MACHINERY

1. *What this Plan does.* This Plan sets up the procedure under which steel producers (hereinafter called Producers) agree voluntarily to make steel products available to mining machinery manufacturers who comply with the provisions of this Plan (hereinafter called participating Manufacturers), for use in the manufacture of certain types of mining machinery, mining equipment, and repair parts therefor (hereinafter collectively called mining machinery). The Plan is limited to the types of mining machinery which are listed in the attached Schedule and which are designed or intended for use in the extractive mining and quarrying of minerals

(other than petroleum and gas) or the smelting and refining of nonferrous ores.

2. *Agreement by steel producers.* During the period this Plan remains in effect, Producers will, out of their own production or that of their producing subsidiaries or affiliates, make available to participating Manufacturers a total of 26,400 net tons of steel products per month (or such other total as may later be agreed upon as the quantity needed to make the program represented by this Plan effective). The 26,400 net tons will be distributed by types approximately as follows (appropriate adjustments in the break-down will be made if the total quantity is changed in order to meet the program requirements):

Type	Net tons per month		
	Carbon steel	Alloy steel	Total
Hot rolled sheets	3,525	210	3,735
Hot rolled strip	16		16
Cold rolled sheets	14		14
Plates under 3/8 inch	4,000	40	4,040
Plates over 3/8 inch	2,640	485	3,125
Hot rolled bars	3,800	3,300	7,100
Cold rolled bars	210	20	230
Structural shapes	6,305	255	6,560
Pipe	375		375
Tubing	720		720
Slabs	355	130	485
Total net tons per month	21,960	4,440	26,400

3. *Determination of quantities to be furnished by Respective Producers.* Unless otherwise specified in its acceptance of this Plan, the quantities to be made available by each Producer, as its commitment under this Plan, will be such as the Secretary of Commerce, after consulting the Steel Task Committee of the Office of Industry Cooperation of the Department of Commerce, determines to be fair and equitable. However, upon request of the Secretary of Commerce from time to time, each Producer will give consideration to making additional quantities available. Producers will take credit against their commitments under this Plan only for quantities delivered on orders certified in accordance with Paragraph 9 below.

4. *Contractual Arrangements.* Such products will be made available under such contractual arrangements as may be made by the respective Producers, or their producing subsidiaries and affiliates, with the respective participating Manufacturers, No request or authorization will be made by the Department of Commerce relating to the allocation of orders or customers, the delivery of products, the allocation of business among participating Manufacturers, or any limitation or restriction on the production or marketing of any products. This Plan does not authorize nor approve any fixing of prices, and participation in this Plan does not affect the prices or terms and conditions on which any product is actually sold and delivered.

5. *Limitations as to Types, Sizes and Quantities.* A Producer need make available under this Plan only those products which are within the type and size limitations of the mill or mills which it may select for the fulfillment of its commitment under this Plan. The quantities which it may have undertaken to make available in any month may be reduced, or at its option their delivery may be postponed, in direct proportion to any production losses during the month due to causes beyond its control.

6. *Reports from Steel Producers.* Each Producer will, if requested by the Office of Industry Cooperation of the Department of Commerce (subject to approval of the Bureau of the Budget under the Federal Reports Act of 1942), submit to that office periodic reports of the total quantities, by types, of products shipped, and accepted for shipment, under the Plan.

7. *Reports from Participating Manufacturers.* Each participating Manufacturer will submit the following to the Secretary of Commerce:

(a) *Requirements Report.* A report showing the quantities and types of (i) mining machinery (as designated in paragraph 1 above) scheduled for production during each month under this Plan and (ii) steel products required for that scheduled production. If multiple end-use items normally made for stock shipment are involved, the production and requirements figures should include, for these items, only such quantities which are consistent with what regular trade experience records for 1947 show to be the percentage of the Manufacturer's production of such items which normally goes into mining end use. The basis of such computation should be explained. The quantities and types of steel products to be made available monthly under the Plan to individual participating Manufacturers will be determined by the Secretary of Commerce after consultation with the Mining Machinery Manufacturers Industry Task Committee, subject to such revision, if any, from time to time, as may be deemed necessary by the Secretary of Commerce after consultation with that Committee.

(b) *Monthly Steel Consumption Report.* A monthly report showing the total quantities and types of steel products (i) received by the participating Manufacturer from all sources during the preceding month for the manufacture of mining machinery and (ii) put in process by him during that preceding month for that purpose. Such a report should accompany the requirements report explained in paragraph 7 (a) above and, in addition, should subsequently be submitted within ten days after the end of each month during which the participating Manufacturer obtains steel products under this Plan.

(c) *Other Reports.* Such other relevant reports as may be requested from time to time by the Secretary of Commerce (subject to the approval of the Bureau of the Budget under the Federal Reports Act of 1942).

8. *Obligations of Participating Manufacturers.* By participation in this Plan, each participating Manufacturer shall be obligated as follows: to use all products obtained under this plan solely for and in the manufacture of mining machinery (as designated in paragraph 1 above); not to resell or transfer any products so obtained under this Plan in the form received by the participating Manufacturer except to subsidiaries, affiliates, subcontractors, or fabricators for manufacture or fabrication of sub-assembly products when specifically provided for in the allocation authorization; not to build up, beyond current needs, any inventories of products obtained, or end products manufactured, under this Plan; and to take appropriate steps to assure that mining machinery manufactured from steel products obtained under this Plan, particularly multiple-use machinery, are directed solely to mining uses. If a participating Manufacturer becomes unable to use, for the purposes of this Plan, any products obtained under this Plan, he shall be further obligated to hold them subject to such other use or disposition (including reallocation to other consumers or return to the producer from whom purchased) as shall be authorized by the Office of Industry Cooperation of the Department of Commerce.

Participation in the benefits in this Plan shall at all times be contingent upon each participating Manufacturer's continued strict compliance with the provisions hereof. In the event of any actual or prospective noncompliance by any participating Manufacturer, the Secretary of Commerce may, after written notice to the participating Manufacturer, take such action as he deems warranted with respect to the Manufacturer's participation in the plan, including partial or total suspension or termination of participation privileges and notification to the participating steel producers not to make any or certain further shipments under the Plan to such Manufacturer.

9. *Procedure for Placing Orders Under this Plan.* Purchase orders under this Plan are to be placed with participating producers or their producing subsidiaries or affiliates and shall be placed not less than 60 days before the first of the month in which delivery is required. Each such purchase order shall bear the following certification by the participating Manufacturer:

DEPARTMENT OF COMMERCE VOLUNTARY PLAN FOR ALLOCATION OF STEEL PRODUCTS FOR MINING MACHINERY

The undersigned certifies to the seller and to the Department of Commerce that the products specified in this order will be used solely for and in the manufacture of mining machinery, and that this order is placed under, and in strict compliance with the above Voluntary Plan, with which the undersigned is familiar and in which the undersigned is a participant. The undersigned further certifies that the quantities ordered herewith, when added to all other quantities certified by the undersigned under the Plan for the same delivery month, do not exceed the undersigned's allocations under the Plan for that month.

_____
(Name of company)

By _____
(Duly authorized officer)

_____
(Date)

10. *Procedure for, and Effect of, Becoming a Participant.* After approval of this plan by the Attorney General and by the Secretary of Commerce, and after requests for compliance with it have been made of steel producers and mining machinery manufacturers by the Secretary of Commerce, any such producer or manufacturer may become a participant in this Plan by advising the Secretary of Commerce, in writing, of its acceptance of such request. Such requests for compliance will be effective for the purpose of granting certain immunity from the antitrust laws and the Federal Trade Commission Act, as provided in section 2 (c) of Public Law 395, only with respect to such producers and manufacturers as notify the Secretary of Commerce in writing that they will comply with such requests.

11. *Effective Date and Duration.* This Plan shall become effective upon the date of its final approval by the Secretary of Commerce. It shall cease to be effective at the close of business on February 28, 1949, unless the time limitation of March 1, 1949 now specified in Section 2 (b) of Public Law 395, 80th Congress, is extended or otherwise changed by legislative action in a form which permits continuation of this Plan, in which event this Plan shall thereupon automatically continue in effect through September 30, 1949 (or through the date specified in such legislative action if a date earlier than September 30, 1949 is so specified). However, the Plan may be terminated on such earlier date as may be determined by the Secretary of Commerce, upon not less than 60 days' notice by letter, telegram, or publication in the FEDERAL REGISTER.

12. *Withdrawal from Plan.* Any Producer or participating Manufacturer may withdraw from this Plan by giving not less than 60 days' written notice to the Secretary of Commerce.

13. *Clarifying Interpretations.* Any interpretation issued by the Secretary of Commerce (after consultation with the Attorney General), in writing, to clarify the meaning of any terms or provisions in this Plan shall

be binding upon all participants notified of such interpretation.

[To be signed by the Attorney General and the Secretary of Commerce upon approval.]

SCHEDULE

TYPES OF MINING MACHINERY WITHIN SCOPE OF ABOVE PLAN

(This listing excludes all types designed or intended for petroleum and gas use or for use as housing or erection materials for surface plants.)

A. Machinery designed specifically for mining

1. *Crushers.* Stationary mine and smelter type for crushing or grinding. Coal pulverizers are not included.
2. *Underground mine haulage.* Coal and ore cars; mine locomotives (under 20 tons); self-propelled shuttle cars.
3. *Coal cutting machines and cutting machine trucks.*
4. *Portable underground mine conveyors.* All types, including duck bills.
5. *Underground mine hoists.* Slope and shaft.
6. *Underground mine loaders and muckers.*
7. *Ore dressing and coal preparation machinery and equipment.*
8. *Non-ferrous smelting and refining machinery and equipment.*
9. *Specialized underground mining equipment.* Equipment designed specially for underground mining use and not covered in other items in this schedule. This includes such items as aerial tramways; cages and skips; automatic mine doors; dredges; miner's lamps.
10. *Mining drills.* Electric coal drills; blasting and prospecting auger drills for strip-pit coal; diamond and calyx core drills.

B. Other related machinery intended for mining end-use

1. *Conveyors.* All types (belt, bucket elevator, general purpose screen and feeder, car haul) for (a) mechanical handling of ores and minerals in surface plants or (b) permanent installation for primary transportation underground.
2. *Compressors.* Portable or stationary.
3. *Mine fans and blowers.*
4. *Ore cars.* Railroad-type for open-pit mining.
5. *Pumps.* Centrifugal; sump; rotary.
6. *Rock drills.* Drifters; stopers; jackhammers; paving breakers; wagon drills; drill jibs; blast hole drills; drill bit sharpeners.
7. *Power shovels and draglines.*
8. *Miscellaneous equipment.* Other equipment intended for mining use although not designed specially for such use. This includes such items as cement-making; refractory and quarrying equipment; machine tools; welders; metallizing units.

EXHIBIT B—REQUEST

PROPOSED REQUEST UNDER PUBLIC LAW 395, 80TH CONGRESS, FOR ALLOCATION OF STEEL PRODUCTS FOR MINING MACHINERY

The Secretary of Commerce, pursuant to the authority vested in him by Public Law 395, 80th Congress, and Executive Order 9919, after consultation with representatives of the steel producing and mining machinery manufacturing industries and of the interested government agencies, and after expression of the views of industry, labor and the public generally at an open public hearing held on December 7, 1948, has determined that, in order to carry out the program begun under the voluntary plan entered into by steel producers to furnish certain steel products for manufacturers of mining machinery, it will be necessary, and is practicable and appropriate to the successful carrying out of the policies set forth in said Public Law 395, that steel producers make further deliveries of steel products to such manufacturers after the expiration of the plan on February 28, 1949.

Therefore, the Secretary of Commerce, in accordance with subsections 2 (c) and 2 (f) of Public Law 395, 80th Congress, and with the approval of the Attorney General, hereby requests:

1. That steel producers participating in the above-mentioned voluntary plan continue to make available monthly approximately 26,400 net tons of steel products (or such other total as may have been agreed upon under the said plan as the quantity needed to make the program effective), during the period March 1, 1949, through August 31, 1949, on certified orders from manufacturers of mining machinery; and that such products be made available in accordance with delivery procedures established under the said plan.

2. That manufacturers of mining machinery place purchase orders hereunder only for the quantities and types of steel products established for them individually by the Secretary of Commerce; that they put identifying certifications on such purchase orders; and that they use all steel products obtained hereunder solely for the manufacture of mining machinery of the types listed in the Schedule attached to the above-mentioned voluntary plan.

In the event that an extension of the effectiveness of the above-mentioned voluntary plan beyond February 28, 1949, takes effect pursuant to appropriate legislation, this request will be superseded by said extended Plan.

[To be signed by the Attorney General and the Secretary of Commerce upon approval.]

[F. R. Doc. 48-10419; Filed, Nov. 26, 1948; 11:18 a. m.]

FEDERAL SECURITY AGENCY

Food and Drug Administration

ORGANIZATION AND FUNCTIONS [1]

The following description of the organization, functions and procedures, etc. of the Food and Drug Administration is published pursuant to § 1.45 (a) of the Federal Register Regulations (13 F. R. 5929).

I. *Organization*—A. *Creation and authority.* The name Food and Drug Administration was first provided by the Agricultural Appropriation Act of 1931, approved May 27, 1930 (46 Stat. 392), although the law-enforcement functions had been carried on under different organizational titles since January 1, 1907, when the Food and Drugs Act of 1906 (34 Stat. 3915; 21 U. S. C. 1, secs. 1–15) became effective. The Food and Drug Administration and its functions necessary for the enforcement of the five acts named in II were transferred from the Department of Agriculture to the Federal Security Agency, effective June 30, 1940, in accordance with the provisions of the President's Reorganization Plan IV.

B. *Washington headquarters.* The central organization of the Food and Drug Administration consists of the Offices of the Commissioner, Deputy Commissioner, and Associate Commissioners of Food and Drugs and the following administrative and technical divisions, the functions of which are indicated by their names:

Division of Business Operations.
Division of Cosmetics.
Division of Field Operations.
Division of Food.
Division of Litigation.
Division of Medicine.
Division of Microbiology.
Division of Penicillin Control and Immunology.
Division of Pharmacology.
Division of Program Research.
Division of State Cooperation.
Division of Vitamins.

The offices of the Commissioner, Deputy Commissioner, and Associate Commissioners of Food and Drugs and the Divisions of Business Operations, Field Operations, Litigation, Medicine, Program Research, and State Cooperation are in the Federal Security Building, Fourth Street and Independence Avenue, SW., Washington 25, D. C. The other divisions are in the South Agriculture Building, Twelfth and C Streets, SW., Washington 25, D. C.

C. *Field service.* The field organization of the Food and Drug Administration consists of sixteen inspection districts. The district headquarters, subdistricts, and inspection stations are as follows:

ATLANTA DISTRICT: Room 416, Federal Annex, Atlanta 3, Ga.

Inspection Stations: U. S. Engineers Building No. 1, 2d Floor, Custom House Wharf, Charleston 40, S. C. (P. O. Box 711). Room 233, Post Office Building, Charlotte 1, N. C. (P. O. Box 1516). Room 334, Custom House and Post Office Building, Jacksonville 1, Fla. (P. O. Box 4937). Pier 2, Municipal Docks, c/o U. S. Custom Inspectors, Miami 17, Fla. (P. O. Box 2776). Room 117, U. S. Appraiser's Stores, Platt and Water Streets, Tampa 1, Fla. (P. O. Box 1166).

BALTIMORE DISTRICT: Room 800, U. S. Appraiser's Stores, Gay and Lombard Streets, Baltimore 2, Md.

Inspection Stations: Room 342, State Capitol Building, Charleston 23, W. Va. (P. O. Box 641). Room 415-B, U. S. Post Office and Court House, Norfolk 10, Va. (P. O. Box 1222). Room 304, Post Office Building, Roanoke, Va. (P. O. Box 941). Room 4175, South Agriculture Building, Washington 25, D. C.

BOSTON DISTRICT: Room 805, U. S. Appraiser's Stores, 408 Atlantic Avenue, Boston 10, Mass.

Inspection Stations: Room 11, U. S. Customs Building, 312 Fore Street, Portland 3, Maine. Room 509, Main Post Office Building, Providence 3, R. I. Room 312, Federal Building, Springfield 3, Mass.

BUFFALO DISTRICT: Room 415, Federal Building, South Division and Ellicott Streets, Buffalo 3, N. Y.

Subdistrict: Room 303, Old Post Office Building, Fourth and Smithfield Streets, Pittsburgh 19, Pa.

Inspection Station: Room 56, Federal Building, Rochester, N. Y.

CHICAGO DISTRICT: Room 1211, Post Office Building, Van Buren and Canal Streets, Chicago 7, Ill.

Inspection Stations: Room 908, Federal Building, 231 West Lafayette Boulevard, Detroit 26, Mich. Room 363, Post Office Building, Milwaukee 2, Wis.

CINCINNATI DISTRICT: Room 501 Post Office Building, Cincinnati 2, Ohio.

Inspection Stations: Room 2, New Post Office Building, Cleveland 13, Ohio. Room 302, Old Post Office Building, Columbus 15, Ohio. Room 211, State Board of Health Building, 1098 West Michigan, Indianapolis, Ind. Room 205-A, U. S. Courthouse, Nashville 3, Tenn.

[1] The regulations published under § 1.1 et seq. of Chapter I have been decodified.

DENVER DISTRICT: Room 531, U. S. Custom House, Denver 2, Colo.

Inspection Station: Room AO/B, Federal Building, Salt Lake City 1, Utah.

KANSAS CITY DISTRICT: Room 323, U. S. Court House, 811 Grand Avenue, Kansas City 6, Mo.

Inspection Stations: Room 104, Municipal Building, 3400 Northeastern Avenue, Oklahoma City 2, Okla. Room 413, Federal Office Building, Omaha 2, Nebr.

LOS ANGELES DISTRICT: Room 514, California Medical Building, 1401 South Hope Street, Los Angeles 15, Calif.

Inspection Stations: Pier A, Berth 5, Long Beach, Calif. Room 305, Federal Office Building, Phoenix, Ariz. Room 121, U. S. Customs and Courthouse Building, San Diego 1, Calif.

MINNEAPOLIS DISTRICT: Room 201, Federal Office Building, Washington and Third Avenue South, Minneapolis 1, Minn.

Inspection Station: Room 227, Old Federal Building, Des Moines 9, Iowa.

NEW ORLEANS DISTRICT: Room 223, U. S. Custom House, 423 Canal Street, New Orleans 16, La.

Subdistrict: Room 1018, Federal Building, Houston 14, Tex. (P. O. Box 4240)

Inspection Stations: Room 203, Social Security Building, Third Avenue and Twenty-third Street, NW., Birmingham 1, Ala. (P. O. Box 1649). Room 535, U. S. Terminal Annex, Dallas 2, Tex. (P. O. Box 5449). Shreveport, La. (P. O. Box 4267, Centenary Station).

NEW YORK DISTRICT: Room 1200, U. S. Appraiser's Stores, 201 Varick Street, New York 14, N. Y.

Inspection Stations: Room B-99, Federal Building, Newark 1, N. J. (P. O. Box 204). Room 208, Post Office Building, Waterbury 51, Conn.

PHILADELPHIA DISTRICT: Room 1204, New Custom House, Second and Chestnut Streets, Philadelphia 6, Pa.

ST. LOUIS DISTRICT: Room 1007, New Federal Building, 1114 Market Street, St. Louis 1, Mo.

Inspection Stations: Room 326, U. S. Custom House, Memphis 1, Tenn. Room 315, Post Office Building, Springfield, Ill. (P. O. Box 12). Room 402, Post Office Building, Springfield, Mo.

SAN FRANCISCO DISTRICT: Room 512, Federal Office Building, Fulton and Leavenworth Streets, San Francisco 2, Calif.

Inspection Stations: Room 308, Post Office Building, Fresno, Calif. Room 340 (c/o Bur. of Plant Industry), Post Office Building, 9th and I Streets, Sacramento, Calif.

SEATTLE DISTRICT: Room 501, Federal Office Building, Seattle 4, Wash.

Subdistrict: Room 315, U. S. Custom House, Portland 9, Oreg.

Inspection Stations: 215 Federal Building, Butte, Mont. (P. O. Box 247). Room 321, Federal Building, Spokane 8, Wash.

II. *Functions and procedures*—A. *Law enforcement.* The Food and Drug Administration, acting under the supervision of the Federal Security Administrator, through the Commissioner for Special Services, administers the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et seq.), the Federal Tea Act (21 U. S. C. 41 et seq.), the Federal Caustic Poison Act (15 U. S. C. 401 et seq.), the Federal Import Milk Act (21 U. S. C. 141 et seq.), and the Federal Filled Milk Act (21 U. S. C. 61 et seq.). In the enforcement of these acts and related duties, the following procedures have been established:

1. Evidence acquired through examinations and investigations by the Food and Drug Administration of violations of any of the acts listed above, on which criminal, libel for condemnation, or injunction proceedings are contemplated under the authority of such act, is referred by the Federal Security Administrator to the Department of Justice with recommendation for the institution of such proceedings.

2. Any interested person may propose to the Federal Security Administrator the issuance, amendment, or repeal of any regulation authorized by any law listed above. The request should describe the representative capacity, if any, of the applicant and set forth the proposal in general terms, and should state reasonable grounds therefor. Proceedings on proposals with respect to regulations under section 507 (f) or 701 (e) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 357 (f) and 371 (e)) are prescribed in those sections and in the rules of practice for hearings under section 701 (e) which appear in the Code of Federal Regulations. Proposals with respect to regulations on which no hearing is required are announced for informal public hearing or for the submission of written comments, unless such proposals are clearly noncontroversial, relate solely to the internal management of the Agency, or involve interpretive rules, statements of policy, procedure, or practice.

3. Procedure governing imports under the Federal Food, Drug, and Cosmetic Act is prescribed in the Code of Federal Regulations; procedure governing imports under the Federal Caustic Poison Act is prescribed by 21 CFR, Part 175. Appeals from decisions under either act of officers of districts are informal and may be made by letter or in person by the importer or his representative.

4. Procedure governing the filing of applications with respect to new drugs pursuant to section 505 (b) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (b)) is prescribed by the Code of Federal Regulations. Copies of the form to be followed in preparing applications may be obtained from the Commissioner of Food and Drugs, the Division of Medicine, and the districts. Procedure for the conduct of hearings under section 505 (d) and (e) of the act (21 U. S. C. 355 (d) and (e)) is stated in notices of such hearings.

5. Procedure governing the importation of merchandise subject to the Federal Tea Act is prescribed in 21 CFR, part 170, as amended. Forms may be obtained from the Commissioner of Food and Drugs, the New York and San Francisco Districts, and from any Collector of Customs.

6. Procedure governing the importation of milk and cream under the Federal Import Milk Act is prescribed by 21 CFR, Part 185. Forms may be obtained from the Commissioner of Food and Drugs and from Veterinary Director General, Health of Animals Division, Department of Agriculture, Ottawa, Canada. Canadian shippers may obtain from the Veterinary Director General information as to the Canadian officials who are available to supervise tests and examinations.

7. Procedure governing the certification of coal-tar colors under the Federal Food, Drug, and Cosmetic Act is prescribed in 21 CFR, Part 135, as amended. Specimen forms for use as guides in preparing requests for certification of batches of straight colors, color mixtures, and repacked colors may be obtained from the Commissioner of Food and Drugs, the Division of Cosmetics, and the districts.

8. Procedure for the certification under the Federal Food, Drug, and Cosmetic Act of drugs composed wholly or partly of insulin is prescribed by 21 CFR, Part 144, as amended. Specimen forms for use as guides in preparing requests for certification of insulin-containing drugs, may be obtained from the Commissioner of Food and Drugs and the Division of Pharmacology.

9. Procedure for the certification under the Federal Food, Drug, and Cosmetic Act of drugs composed wholly or partly of penicillin or streptomycin is prescribed in 21 CFR, parts 141 and 146. Specimen forms for use as guides in preparing the applications and requests for certification or exemption from certification may be obtained from the Commissioner of Food and Drugs and the Division of Penicillin Control and Immunology.

10. Procedure governing the service of inspection of establishments packing sea food under the Federal Food, Drug, and Cosmetic Act and applications therefor is prescribed in the case of canned shrimp and canned oysters by 21 CFR, Part 155. Forms for application for such service, its renewal or extension may be obtained from the Commissioner of Food and Drugs and the Atlanta or New Orleans District.

11. Informal conferences may be arranged for discussion of any subject pertaining to the functions of the Food and Drug Administration, although the scope of discussion of pending court cases is necessarily limited. Such conferences are particularly encouraged in connection with the formulation of proposals to issue, amend, or repeal regulations. The Food Standards Committee usually holds informal public hearings, after appropriate notice, on proposals to formulate definitions and standards of identity for food to be announced for formal public hearings.

III. *Delegations of authority.* A. Final authority of the Federal Security Administrator is delegated:

1. To the Commissioner, Deputy Commissioner, and Associate Commissioners of Food and Drugs to make determinations of probable cause contemplated by section 304 (a) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 334 (a)).

2. To officers of the districts of the Food and Drug Administration to determine whether articles offered for import are in compliance with the Federal Food, Drug, and Cosmetic Act and the Federal Caustic Poison Act. Decisions by such officers are subject to review successively by the Commissioner of Food and Drugs and the Federal Security Administrator.

3. To the Commissioner of Food and Drugs and to such officer of the Food and Drug Administration whom he may designate to act on his behalf for the purpose of making determinations with respect to disclosure of official records and information in accordance with 21 CFR 196.1.

B. Final authority of the Commissioner of Food and Drugs is delegated:

1. To the Chief and the Assistant Chief of the Division of Pharmacology to sign on behalf of the Commissioner certificates issued by the Food and Drug Administration for drugs composed wholly or in part of insulin.

2. To the Chief of the Division of Cosmetics to sign on behalf of the Commissioner certificates issued by the Food and Drug Administration for coal-tar colors.

3. To the Deputy Commissioner and Associate Commissioners of Food and Drugs, the Chief and Assistant Chief of the Division of Penicillin Control and Immunology to act on behalf of the Commissioner for the purposes of the regulations governing the certification of batches of penicillin- and streptomycin-containing drugs.

4. To the Deputy Commissioner and Associate Commissioners of Food and Drugs and the Director of Litigation to make determinations with respect to disclosure of official records and information in accordance with 21 CFR 196.1.

IV. *Availability of information*—A. *Public records.* Public records pertaining to the functions of the Food and Drug Administration, including records of formal and informal public hearings on proposals to issue, amend, or repeal regulations, are available for inspection at the Office of the Commissioner of Food and Drugs.

B. *Official records.* Disclosure of official records and information on investigations by the Food and Drug Administration pursuant to its law-enforcement program is subject to the procedure described in 21 CFR 196.1.

C. *Making submittals and requests.* 1. The following should be directed to the Federal Security Administrator, and mailed to the Commissioner of Food and Drugs: a. Applications for the issuance, amendment, or repeal of any regulation authorized by law.

b. Applications with respect to new drugs submitted pursuant to section 505 (b) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (b)).

c. Applications for permits under the Federal Import Milk Act.

2. Requests for certification of batches of coal-tar colors, drugs composed wholly or partly of insulin, and drugs composed wholly or partly of penicillin or streptomycin should be directed to the Commissioner of Food and Drugs.

3. Applications for the granting of sea food inspection service at establishments packing canned shrimp or canned oysters should be directed to the Atlanta District or the New Orleans District.

D. *Inspection of orders and opinions.* 1. Final orders and opinions involving detention of importations under the Federal Food, Drug, and Cosmetic Act, the Federal Caustic Poison Act, and the Federal Tea Act are available for inspection at the offices of the Food and Drug Administration where issued, except those which are designated for good cause to be confidential and not cited as precedents.

2. Final orders and opinions of the Administrator issued under section 505 (d), (e), and (f) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (d), (e), (f)) involving new-drug matters are available for inspection at the Office of the Commissioner of Food and Drugs, except those which are designated for good cause to be confidential and not cited as precedents.

E. *General information.* General information pertaining to the functions of the Food and Drug Administration may be obtained from any of the offices listed in section 851 C. Responses to letters directed to inspection stations are likely to be delayed, since inspectors assigned to such stations are frequently absent on official travel. Earlier responses to inquiries concerning the legality of new products or processes or to suggestions involving change in policy are ordinarily obtained by directing such requests and suggestions to the Commissioner of Food and Drugs.

Dated: November 22, 1948.

[SEAL] JEWELL W. SWOFFORD,
Commissioner for Special Services.

Approved: November 22, 1948.

OSCAR R. EWING,
Administrator.

[F. R. Doc. 48-10327; Filed, Nov. 26, 1948; 8:51 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 54-51]

NATIONAL POWER AND LIGHT CO. ET AL.

SUPPLEMENTAL APPLICATION NO. 1; SUPPLEMENTAL ORDER APPROVING PROPOSED CHARTER AMENDMENTS AND BY-LAWS UNDER PLAN

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 19th day of November A. D. 1948.

In the matter of National Power & Light Company, Lehigh Valley Transit Company, et al. File No. 54-51. Application No. 10, Part B.

The Commission having by order dated August 25, 1948 approved, under section 11 (e) of the Public Utility Holding Company Act of 1935, an amended plan for the reorganization of Lehigh Valley Transit Company ("Transit"), subject to certain reservations of jurisdiction with respect to, among other things, the terms and conditions of the new common stock proposed to be issued, and said amended plan thereafter having been approved by the District Court of the United States for the Eastern District of Pennsylvania by order dated and entered September 28, 1948; and

A supplemental application, designated as Supplemental Application Number One, having been filed by the proponents of said plan proposing that the charter of Lehigh Valley Transit Company be amended in certain respects, the substance of which amendments may be summarized as follows: (1) That the maximum number of shares of stock which the company may have authorized and outstanding be 750,000 shares which shall be without nominal or par value, (2) that the common stock shall be entitled to cumulative voting in the election of directors, (3) that the common stock shall have limited preemptive rights to subscribe for new common stock or securities convertible into common stock unless there shall be a public offering of such stock, and (4) that the consideration received from the sale of common stock without par value shall be entered in the capital stock account; and said supplemental application also proposing certain amendments to the by-laws of Transit; and it appearing that application is being made by Transit to the Pennsylvania Public Utility Commission and that the foregoing proposed amendments will not become effective until approved by that Commission; and

It appearing to the Commission that the proposed amendments meet the applicable standards of the act and that no adverse findings are necessary thereunder, and that it is not necessary to impose any terms and conditions in connection therewith, and it further appearing to the Commission that the said supplemental application should be granted effective forthwith;

It is ordered, Pursuant to the applicable provisions of the Act and in accordance with the aforesaid reservations of jurisdiction contained in the order of August 25, 1948, that the said supplemental application be, and hereby is, granted and that the jurisdiction heretofore reserved in this respect be, and hereby is, released.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10320; Filed, Nov. 26, 1948; 8:47 a. m.]

[File No. 54-81]

MIDDLE WEST CORP. ET AL.

ORDER DENYING MOTION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 18th day of November A. D. 1948.

In the matter of the Middle West Corporation, Central and South West Utilities Company, and American Public Service Company. File No. 54-81.

Albert E. Turner, as a representative of certain prior lien stockholders of Central and South West Utilities Company ("Central") and of certain preferred stockholders of American Public Service Company ("American"), having filed a motion requesting the Commission to reconsider its Order denying Turner's request for an allowance of $20,609 for services and requesting a rehearing with respect to his application for an allowance for services rendered in the proceedings relating to the merger and reorganization of American and Central under section 11 (e) of the Public Utility Holding Company Act of 1935;

The Commission on October 1, 1948, having issued its memorandum findings, opinion and order (Holding Company Act Release No. 8547) with respect to allowances of fees and expenses incurred in connection with the plan in which the

request of Turner for an allowance was denied;

The Commission having duly considered Turner's motion and being of the opinion that (1) full opportunity has been given to Turner to present all the facts relating to his claim for an allowance, (2) Turner has testified as to the extent of such services, and (3) the reasons advanced by Turner in support of his motion afford no new, relevant or material basis for an allowance and no showing sufficient to justify the reopening of the record with respect to his request for allowance;

Wherefore it is ordered, That the said motion of Turner requesting reconsideration of the Commission's order dated October 1, 1948, with respect to the denial of Turner's application for allowance of fees and expenses and for a rehearing in connection with the said application for allowance for services be, and the same hereby is, in all respects, denied.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10316; Filed, Nov. 26, 1948; 8:47 a. m.]

[File Nos. 54-127, 59-3, 59-12]

ELECTRIC BOND AND SHARE COMPANY ET AL.

SUPPLEMENTAL ORDER GRANTING ADDITIONAL TIME TO STABILIZE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 18th day of November A. D. 1948.

Electric Bond and Share Company, ("Bond and Share"), a registered holding company, having previously filed an application-declaration regarding the sale of 350,000 shares of its holdings of common stock of Carolina Power & Light Company ("Carolina"), plus any additional shares of such common stock which might be purchased in connection with stabilization operations; and

Bond and Share in connection with its proposed stabilizing operations having requested permission to acquire not more than 17,500 shares of the common stock of Carolina by purchases on the New York Stock Exchange for a period of not more than fourteen days commencing with the date of the Commission's order authorizing such purchases or until the time of the execution of a purchase contract between Bond and Share and the underwriters, whichever should be earlier; and

The Commission having by interim order dated October 22, 1948, granted said application solely with respect to the acquisition by Bond and Share of not in excess of 17,500 shares of the common stock of Carolina for the purpose of stabilizing the market, such acquisitions to be effectuated up to but not on or after November 6, 1948; and

Bond and Share by supplemental application having requested that the Commission issue a further order authorizing the continuance of such purchases for the purpose of stabilization during the period commencing with the effective date of the Commission's order herein granting such supplemental application and ending either on the date of the execution of a purchase contract between Bond and Share and the underwriters or on the fourteenth day after the commencement of such period, whichever date shall be earlier; and

The Commission having considered said supplemental application and being of the opinion that some additional time may be granted, such time, however, to be limited to a period commencing with the effective date of the Commission's order herein and ending either at the time of the execution of a purchase contract between Bond and Share and the underwriters or at the close of the New York Stock Exchange on November 22, 1948, which ever shall be earlier:

It is ordered, Pursuant to the applicable provisions of the Public Utility Holding Company Act, that, effective forthwith, the aforesaid supplemental application regarding additional time within which Bond and Share may acquire shares of the common stock of Carolina for the purpose of stabilization, be and the same hereby is, granted, to the extent of authorizing stabilization until the close of the New York Stock Exchange on November 22, 1948 or until the signing of a purchase contract between Bond and Share and the underwriters, whichever is earlier, subject in all other respects to the provisions of the aforesaid order of October 22, 1948 and to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10315; Filed, Nov. 26, 1948; 8:46 a. m.]

[File Nos. 54-127, 59-3, 59-12]

ELECTRIC BOND AND SHARE CO. ET AL.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 22d day of November A. D. 1948.

In the matter of Electric Bond and Share Company, et al. File Nos. 54-127, 59-3, and 59-12. Application relating to sale of stock of Carolina Power & Light Company.

Notice is hereby given that an application-declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by Electric Bond and Share Company ("Bond and Share"), a registered holding company. Applicant-declarant designates section 12 (d) of the act and Rule U-44 thereunder as applicable to the proposed transactions:

Notice is further given that any interested person may, not later than December 1, 1948, at 5:30 p. m. e. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law raised by said application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after December 1, 1948, said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated pursuant to said act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

All interested persons are referred to said application-declaration which is on file with this Commission for a statement of the transactions therein proposed, which are summarized as follows:

Bond and Share proposes to dispose of approximately 72,612 shares of the common stock of Carolina Power & Light Company ("Carolina") by distributing as a dividend to its stockholders 1/60 of a share of such stock for each share of Bond and Share common stock held. Such distribution is for the purpose of partial compliance with the provisions of Plan II-A of Bond and Share heretofore approved by the Commission requiring the disposition by Bond and Share of all of its 423,408 shares of the common stock of Carolina.

The proposed stock dividend will be payable on December 21, 1948 to stockholders of record at the close of business on December 2, 1948. No certificates or scrip for fractional shares will be issued, but in lieu thereof, cash at the rate of $0.50 per share will be paid on each share of common stock of Bond and Share.

Bond and Share proposes to charge to earned surplus an amount equal to the aggregate market value based on closing prices on December 2, 1948 of the shares of Carolina common stock distributed plus the aggregate amount of cash distributed in lieu of fractional shares.

The amount of 72,612 shares proposed to be declared as a dividend is based on the company's estimate of the present distribution of its common stock. Subsequent stock transfers up to the time of the record date may change such distribution and may require a greater or less number of shares than the 72,612 shares proposed to be distributed. Bond and Share, therefore, requests permission to acquire on the New York Stock Exchange or on the open market, if necessary, not in excess of 1,000 additional shares of Carolina common stock if that portion of Bond and Share's holdings of Carolina's common stock in excess of 72,612 shares has been previously sold, or, in the event that the shares distributed as a result of the proposed stock dividend amount to less than 72,612, to sell the balance in the open market. It is estimated that the amount so required to be sold will not exceed 2,000 shares.

Bond and Share also requests that the order of the Commission shall contain findings and recitations conforming to the requirements of section 1808 (f) and Supplement R of the Internal Revenue Code, as amended.

Bond and Share requests that the Commission's order herein be issued on

or before December 2, 1948, and that it become effective upon issuance.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-10322; Filed, Nov. 26, 1948; 8:48 a. m.]

[File No. 70-1900]

SOUTHERN NATURAL GAS CO. ET AL.

ORDER GRANTING JOINT APPLICATION-DECLARATION AND PERMITTING IT TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 19th day of November A. D. 1948.

In the matter of Southern Natural Gas Company, Birmingham Gas Company, Alabama Gas Company. File No. 70-1900 Southern Natural Gas Company ("Southern"), a registered holding company, and Alabama Gas Company ("Alabama") and Birmingham Gas Company ("Birmingham"), direct operating subsidiary companies of Southern, having filed a joint application-declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 and certain rules and regulations promulgated thereunder, regarding a merger of Alabama into Birmingham and related transactions as follows: (1) The assumption by Birmingham of note obligations of Alabama aggregating $2,790,000 face amount and maturing up to 1956; (2) the refinancing of these notes together with $550,000 face amount of similar notes of Birmingham into $3,340,000 face amount of 2¾% notes maturing up to 1956; (3) an alteration in the voting and certain other rights of the outstanding preferred stock of Birmingham; (4) a request that this Commission remove an existing restriction on the payment of common stock dividends by Birmingham; (5) the issue and sale by Birmingham to Southern of 448,371 shares of common stock of Birmingham and the acquisition thereof by Southern in payment for the common stock of Alabama to be acquired by Birmingham; (6) an offer by Southern to the public holders of Birmingham's common stock to exchange one share of common stock of Southern for two shares of stock of Birmingham and, provided the merger is consummated, an undertaking on the part of Southern to distribute to the public holders of the common stock of Birmingham not electing to exchange their holdings for Southern's common stock a cash payment, as soon as practicable after the consummation of the merger, of 90¢ for each full share of Birmingham then held; (7) the issuance by Southern of the common stock required in effectuating the provisions of Clause (6) herein; and (8) the adoption by the resulting company, after the acquisition of the assets of Alabama in connection with the merger thereof into Birmingham and the proposed capitalization changes in Birmingham, of the name Alabama Gas Corporation;

Southern having requested that such order or orders as the Commission shall issue approving the exchange of its common stock for the common stock of Birmingham determine that such exchange is necessary or appropriate to the integration or simplification of the holding company system of which Southern, Birmingham, and Alabama are members and request that such order or orders conform to the requirements of sections 371, and 1808 (f) of the Internal Revenue Code, as amended, and contain the recitals and specifications described therein;

A public hearing on these matters having been held after appropriate notice and the Commission having considered the record and having made and filed its Findings and Opinion wherein it was found that the applicable statutory standards had been satisfied and that no basis existed for making any adverse findings with respect to said joint application-declaration and deeming it appropriate in the public interest and in the interest of investors and consumers that it be granted and permitted to become effective and further deeming it appropriate to grant the request of Birmingham that the restrictive condition, with respect to the payment of dividends on its common stock, be removed;

It is hereby ordered, That the joint application-declaration as amended be and the same hereby is granted and permitted to become effective, forthwith, subject, however, to the terms and conditions prescribed in Rule U-24;

It is further ordered, That the condition restricting the declaration or payment by Birmingham of dividends on its common stock contained in the order of this Commission dated August 10, 1944 (File No. 70-920) be, and the same hereby is, rescinded; and

It is further ordered and recited, That the issue and exchange by Southern Natural Gas Company of not to exceed 9,419 shares of its common stock for publicly held stock of Birmingham Gas Company, at the rate of one share of Southern Natural Gas Company common stock for two shares of common stock of Birmingham Gas Company, are necessary and appropriate to the integration or simplification of the Southern Natural Gas Company holding company system, of which Birmingham Gas Company is a member, and are necessary and appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 48-10319; Filed, Nov. 26, 1948; 8:47 a. m.]

[File No. 70-1938]

BUFFALO NIAGARA ELECTRIC CORP.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 19th day of November 1948.

Buffalo Niagara Electric Corporation ("Buffalo Niagara"), a subsidiary of Niagara Hudson Power Corporation, a registered holding company, which in turn is a subsidiary of The United Corporation, also a registered holding company, having filed an application, pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, with respect to the following proposed transaction:

Buffalo Niagara proposes to issue prior to January 1, 1949, promissory notes in a principal amount not to exceed $5,000,000, pursuant to the provisions of an amendment dated August 17, 1948, to a Loan Agreement dated December 19, 1947, between Buffalo Niagara and certain banks. The proposed promissory notes are to bear interest at the rate of 2½% per annum and to be due December 31, 1950, subject to the right of Buffalo Niagara to prepay at any time any part or all of such indebtedness. Pursuant to the provisions of the original loan agreement, Buffalo Niagara issued its notes in an aggregate principal amount of $10,000,000 bearing interest at the rate of 2¼% per annum.

The $5,000,000 of proceeds to be derived by Buffalo Niagara from said promissory notes are to be applied to the cost of the construction, extension, and improvement of its plant, property, and facilities. An amendment to the application states that the issue and sale of the $5,000,000 principal amount of promissory notes was approved by the Public Service Commission of the State of New York by order dated November 8, 1948.

Appropriate notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said application within the period specified, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to said application that the requirements of the applicable provisions of the Act and Rules thereunder are satisfied, that no adverse findings are necessary thereunder, and deeming it appropriate in the public interest and in the interests of investors and consumers that the said application be granted, and deeming it appropriate to grant the request of applicant that the order become effective as soon as possible:

It is hereby ordered, Pursuant to Rule U-23 and the applicable provisions of said act, that said application be, and the same hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 48-10321; Filed, Nov. 26, 1948; 8:47 a. m.]

[File No. 70-1962]

PUBLIC SERVICE ELECTRIC AND GAS CO.

SUPPLEMENTAL ORDER RELEASING JURISDICTION OVER FEES AND GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its

office in the city of Washington, D. C., on the 22d day of November 1948.

Public Service Electric and Gas Company ("PEG"), a public utility subsidiary of the United Corporation, a registered holding company, having filed an application and amendments thereto pursuant to the Public Utility Holding Company Act of 1935, particularly section 6 (b) thereof and Rule U-50 thereunder, regarding the issue and sale at competitive bidding of $50,000,000 principal amount of its debentures due 1963; and

The Commission having by order dated November 10, 1948, granted said application, as amended, subject to the condition that the proposed issue and sale of debentures not be consummated until the results of competitive bidding pursuant to Rule U-50 had been made a matter of record in this proceeding, and a further order entered by the Commission in light of the record as so completed and subject to a further reservation of jurisdiction with respect to the payment of all fees and expenses incurred or to be incurred in connection with the proposed sale of debentures; and

PEG having filed a further amendment to its application setting forth the action taken to comply with the requirements of Rule U-50, and stating that pursuant to an invitation for competitive bids, the following bids for said debentures were received:

Name of bidder	Interest rate	Price to company	Annual cost to company
	Percent		
Halsey, Stuart & Co., Inc.	3	100.68	2.943598
Morgan, Stanley & Co., Inc.	3	100.6799	2.943606
The First Boston Corp.	3	100.53999	2.955175
Kuhn, Loeb & Co. and Lehman Bros.	3	100.409	2.96602

The amendment further containing a statement that PEG has accepted the bid of Halsey, Stuart & Co., Inc., for said debentures, as set forth above, and that said debentures will be offered for sale to the public at a price of 101.209% of the principal amount thereof, resulting in an underwriter's spread of 0.529% of the principal amount of said debentures; and

The amendment also having set forth, inter alia, the nature and extent of the services rendered for which requests for payment have been made as follows: $25,000 to Drinker, Biddle & Reath, counsel for PEG; $12,500 to Drexel & Co., financial advisor to PEG; and $17,500 to Davis, Polk, Wardwell, Sunderland & Kiendl, counsel for the successful bidder for said debentures, whose fee is to be paid by the successful bidder; and

The Commission having examined said amendment and having considered the record herein and finding no reason for imposing terms and conditions with respect to said matters:

It is ordered, That jurisdiction heretofore reserved with respect to the matters to be determined as a result of competitive bidding for said debentures under Rule U-50 and with respect to fees and expenses be, and the same hereby is, released, and that said application, as further amended, be, and the same hereby is, granted forthwith, subject, however, to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-10325; Filed, Nov. 26, 1948; 8:48 a. m.]

[File No. 70-1978]

NORTHERN NATURAL GAS CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in Washington, D. C., on the 19th day of November 1948.

Northern Natural Gas Company ("Northern Natural"), a registered holding company, has filed a declaration and amendments thereto pursuant to sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("act") and Rule U-50 promulgated thereunder with respect to the following transactions:

Northern Natural proposes to issue and sell, pursuant to the competitive bidding requirements of Rule U-50 promulgated under the act, $6,000,000 principal amount __%, Serial Debentures, dated November 1, 1948, due 1966-1969, to be issued under an Indenture with the Harris Trust and Savings Bank, as Trustee. The interest rate on said Debentures (to be a multiple of ⅛ of 1%) and the price (exclusive of interest) to be received by Northern Natural (to be not less than 99% and not more than 102¾% of the principal amount of said Debentures) are to be determined by competitive bidding. Declarant states that the net proceeds from such sale will be used in part to replenish working capital and, in part, for the payment of its 1949 construction costs, estimated in the amount of $12,940,000.

The Nebraska State Railway Commission has issued its order authorizing Northern Natural to issue and sell said Debentures, and the State Corporation Commission of the State of Kansas has issued a Memorandum stating that it will issue a certificate upon receipt of the results of competitive bidding.

Said declaration having been filed on October 20, 1948, and amendments thereto having been filed on the 1st and 15th of November 1948, and notice of such filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commissioner not having received a request for hearing with respect to said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to said declaration, as amended, that the requirements of the applicable provisions of the act and rules promulgated thereunder are satisfied, that no adverse findings are necessary, and deeming it appropriate in the public interest and the interest of investors and consumers that said declaration, as amended, be permitted to become effective forthwith, subject to the following reservations of jurisdiction:

It is ordered, Pursuant to Rule U-23 that said declaration, as amended, be, and the same hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24, and subject to the further condition that the proposed sale of debentures by Northern Natural shall not be consummated until the results of competitive bidding pursuant to Rule U-50 have been made a matter of record herein and a further order shall have been entered with respect thereto, which order may contain such further terms and conditions as may then be deemed appropriate, for which purpose jurisdiction is hereby reserved.

It is further ordered, That jurisdiction be, and the same hereby is, reserved over all legal fees and expenses, including those of counsel for the successful bidder, and accounting and engineering fees and expenses.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 48-10317; Filed, Nov. 26, 1948; 8:47 a. m.]

[File No. 70-1979]

ALABAMA POWER CO.

ORDER GRANTING APPLICATION AND RESERVING JURISDICTION OVER FEES

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 19th day of November 1948.

Alabama Power Company ("Alabama"), a public utility subsidiary of The Southern Company, a registered holding company and a wholly owned subsidiary of the Commonwealth & Southern Corporation, also a registered holding company, having filed an application and an amendment thereto pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 (the "act") and Rule U-50 promulgated thereunder with respect to the following proposed transaction:

Alabama proposes to issue and sell, pursuant to the competitive bidding requirements of Rule U-50, $12,000,000 principal amount of its First Mortgage Bonds __% Series, due 1978, to be issued under and secured by Alabama's present indenture dated as of January 1, 1942 as supplemented by indentures dated as of October 1, 1947 and to be dated as of December 1, 1948. The proceeds of the sale of the new bonds will be used to provide a portion of the funds required by Alabama for the construction or acquisition of property additions to its utility plant.

The application having been filed on October 21, 1948, and an amendment thereto having been filed on November 5, 1948, and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said application, as

amended, within the period specified in said notice or otherwise and not having ordered a hearing thereon; and

The proposed issuance and sale of said bonds by Alabama having been expressly authorized by the Alabama Public Service Commission, the State commission of the State in which Alabama is organized and doing business; and

The Commission finding with respect to said application, as amended, that the requirements of section 6 (b) are satisfied and that there is no basis for the imposition of terms and conditions other than those hereinafter stated and the Commission also deeming it appropriate to grant applicant's request that the order herein become effective forthwith upon issuance:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of said act, that said application, as amended, be, and the same hereby is, granted, effective forthwith, subject to the terms and conditions contained in Rule U-24 and subject to the following additional conditions:

1. That the proposed sale of bonds of Alabama shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in this proceeding and a further order shall have been entered by this Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate.

2. That jurisdiction be reserved with respect to all fees and expenses of counsel to be paid in connection with the proposed transaction.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10318; Filed, Nov. 26, 1948; 8:47 a. m.]

[File Nos. 70-1989, 70-1990]

CENTRAL AND SOUTH WEST CORP. ET AL.

SUPPLEMENTAL ORDER RELEASING JURISDICTION OVER COMPETITIVE BIDDING AND GRANTING AND PERMITTING APPLICATION-DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 18th day of November A. D. 1948.

In the matter of Central and South West Corporation, File No. 70-1989, Central and South West Corporation, Central Power and Light Company, Southwestern Gas and Electric Company, File No. 70-1990.

Central and South West Corporation ("Central and South West"), a registered holding company, and Central Power and Light Company and Southwestern Gas and Electric Company, subsidiaries of Central and South West, having filed a declaration and an application-declaration, and amendments thereto, pursuant to sections 6, 7, 9 (a), 10, and 12 (f) of the Public Utility Holding Company Act of 1935 ("act") and Rules U-43 and U-50 promulgated thereunder, regarding, inter alia, the issuance and sale, by Central and South West, at competitive bidding of 659,606 shares of additional common stock, subject to a preemptive rights offering to holders of the company's presently outstanding common stock, such rights to be evidenced by subscription warrants; and

The Commission having, by order dated November 12, 1948, granted and permitted to become effective said declaration and said application-declaration, as amended, subject to the condition that the proposed issue and sale of common stock by Central and South West not be consummated until the results of competitive bidding, pursuant to Rule U-50, have been made a matter of record in this proceeding and a further order entered by the Commission in the light of the record so completed; and

Central and South West having, on November 18, 1948, filed a further amendment to its declaration setting forth the action taken to comply with the requirements of Rule U-50 and stating that, pursuant to its invitation for competitive bids, the following bids were received:

Underwriting group headed by—	Price to company per share [1]	Underwriters' compensation	Aggregate net proceeds
Lehman Bros., Lazard Freres & Co.	$10.25	$257,400.00	$6,503,561.50
Blyth & Co., Inc., Smith, Barney & Co., Harriman Ripley & Co., Inc.	10.25	408,955.72	6,352,605.78
Carl M. Loeb, Rhoades & Co.	10.00	355,500.00	6,240,560.00

[1] The price to the company establishes the subscription price to stockholders.

The amendment further stating that Central and South West has accepted the bid of the underwriting group headed by Lehman Brothers and Lazard Freres & Co., as set forth above; and it appearing that the underwriting agreement provides that said underwriters will purchase from the company at the subscription price indicated above such of the shares as are not purchased upon the exercise of subscription warrants, and that if any such shares are sold by the underwriters prior to the expiration of 30 days following the date of expiration of the subscription offer at a price in excess of $10.75 per share, the underwriters will pay to the company, in addition to the subscription price, one-half of such excess; and

The Commission having considered the record as so completed by said amendment and finding that the applicable standards of said act and rules and regulations promulgated thereunder have been satisfied, and finding no basis for imposing terms and conditions with respect to the price to be paid for said common stock and the underwriters' compensation;

It is ordered, Subject to the terms and conditions prescribed in Rule U-24, that the jurisdiction heretofore reserved with respect to the matters to be determined as a result of competitive bidding for said common stock under Rule U-50 be, and the same hereby is, released, and that said declaration and said application-declaration, as further amended, be and the same hereby are granted and permitted to become effective forthwith.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10314; Filed, Nov. 26, 1948; 8:46 a. m.]

[File No. 70-2004]

PENNSYLVANIA ELECTRIC CO. AND ASSOCIATED ELECTRIC CO.

NOTICE OF FILING

At a regular sesion of the Securities and Exchange Commission, held at its office in the city of Washington, D. C. on the 22d day of November 1948.

Notice is hereby given that Associated Electric Company ("Aelec"), a registered holding company, and its subsidiary, Pennsylvania Electric Company ("Penelec"), have filed, pursuant to the Public Utility Holding Company Act of 1935, a joint application. Applicants have designated section 6 (b), 9 (a), and 10 of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than December 6, 1948, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of fact or law raised by said joint application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after December 6, 1948, said joint application, as filed or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act or the Commission may exempt such transaction as provided in Rule U-20 (a) and Rule U-100 thereof.

All interested persons are referred to said joint application which is on file in the offices of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

Penelec will issue and sell 80,000 shares of its $20 par value common stock to Aelec for an aggregate consideration of $1,600,000 in cash. The proceeds from the sale of the stock will be applied to the general construction program of Penelec.

Applicants state that the Pennsylvania Public Utility Commission has jurisdiction over the issue and sale by Penelec of the 80,000 shares of its common stock.

Applicants request that the Commission enter its order at the earliest date practicable.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 48-10324; Filed, Nov. 26, 1948; 8:48 a. m.]

[File No. 811-318]

GENERAL SHAREHOLDINGS CORP.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 19th day of November A. D. 1948.

Notice is hereby given that Tri-Continental Corporation, the Corporation surviving the merger between Tri-Continental Corporation and General Shareholdings Corporation, has filed an application pursuant to section 8 (f) of the Investment Company Act of 1940 for an order of the Commission declaring that General Shareholdings Corporation has ceased to be an investment company within the meaning of the act.

It appears from the application that an Agreement of Merger dated as of August 3, 1948, between Tri-Continental and General, providing for the merger of General into Tri-Continental as the corporation surviving the merger, became effective in accordance with its terms on October 1, 1948, and thereupon, as provided in Article II of said Agreement of Merger, the separate existence and corporate organization of General, except insofar as continued by statute, ceased.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the office of the Commission in Washington, D. C.

Notice is further given that an order granting the application, in whole or in part and upon such conditions as the Commission may see fit to impose, may be issued by the Commission at any time after December 16, 1948, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than December 14, 1948, at 5:30 p. m., in writing submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon, or request the Commission in writing that a hearing be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reason for such request, and the issues of fact or law raised by the application which he desires to controvert.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 48-10323; Filed, Nov. 26, 1948; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616, E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12324]

SIMON VUKAS AND GURTRUDE KAPPEL VUKAS

In re: Stock and bank accounts owned by Simon Vukas and Gurtrude Kappel Vukas, also known as Gertrude Kappel Vukas and as Gertrude Kappel. F-28-7488-E-1, F-28-7488-E-2, F-28-7488-E-3, F-28-7488-E-4.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Gurtrude Kappel Vukas, also known as Gertrude Kappel Vukas and as Gertrude Kappel, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That Simon Vukas, who there is reasonable cause to believe is, or on or since, the effective date of Executive Order 9389, as amended, and on or since December 11, 1941, has been a resident of Germany, is a national of a designated enemy country (Germany);

3. That the property described as follows: One hundred (100) shares of $10.00 par value common capital stock of General Motors Corporation, evidenced by a certificate numbered D293-226, registered in the name of Simon Vukas, and presently in the custody of Jane J. Hawley, Weylin Hotel, 40 East 54th Street, New York 22, New York, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Simon Vukas, the aforesaid national of a designated enemy country (Germany);

4. That the property described as follows:

a. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, arising out of a Compound Interest Account, account number 28-4, entitled Gertrude Kappel Vukas and/or Simon Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

b. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, arising out of a Compound Interest Account, account number 28-3, entitled Gertrude Kappel In Trust for Simon Vukas, her husband, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

c. That certain debt or other obligation of The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, arising out of a Checking Account, entitled Simon or Gertrude K. Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

d. That certain debt or other obligation of The Bowery Savings Bank, 110 East 42nd Street, New York 17, New York, arising out of a Savings Account, account number 201028, entitled Gertrude Vukas In Trust For Simon Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

e. That certain debt or other obligation of The Bowery Savings Bank, 110 East 42nd Street, New York 17, New York, arising out of a Savings Account, account number 200371, entitled Simon Vukas In Trust for Gertrude K. Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

f. That certain debt or other obligation of Central Savings Bank in the City of New York, 2100 Broadway, New York 23, New York, arising out of a Savings Account, account number 72714, entitled Gertrude Kappel Vukas in trust for Simon Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

g. That certain debt or other obligation of Central Savings Bank in the City of New York, 2100 Broadway, New York 23, New York, arising out of a Savings Account, account number 72713, entitled Simon Vukas in trust for Gertrude Kappel Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

h. That certain debt or other obligation of Emigrant Industrial Savings Bank, 5 East 42nd Street, New York 17, New York, arising out of a Savings Account, account number 118282, entitled Simon Vukas for wife Gurtrude Kappel, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same, and

i. That certain debt or other obligation of Emigrant Industrial Savings Bank, 5 East 42nd Street, New York 17, New York, arising out of a Savings Account, account number 114552, entitled Gertrude Kappel for husband Simon Vukas, maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Simon Vukas and Gurtrude Kappel Vukas, also known as Gertrude Kappel Vukas and as Gertrude Kappel, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

5. That to the extent that the persons named in subparagraphs 1 and 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have

the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 4, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10301; Filed, Nov. 24, 1948; 8:48 a.m.]

[Vesting Order 12334]

A. CHRISTOPHERSON ET AL.

In re: Stock owned by A. Christopherson and others. F-28-23274-D-1, F-28-23275-D-1, F-39-4661-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found;

1. That A. Christopherson and Ernestine Christopherson, whose last known address is Herderstr 4, Bremen, Germany, and Theodor Mahncke, whose last known address is Altona, Elbe, Bahrenfeld, Chaussee 102, Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That Tikamdas Hassaram, whose last known address is c/o Messrs. Hotchand Khemchand, P. O. Box 213, Kobe, Japan, is a resident of Japan and a national of a designated enemy country (Japan);

3. That the property described as follows: Seven (7) shares of no par value common capital stock of MacFadden Publications Incorporated, 205 East 42nd Street, New York, New York, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered 8717, registered in the name of A. Christopherson and Mrs. Ernestine Christopherson as joint tenants, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, A. Christopherson and Ernestine Christopherson, the aforesaid nationals of a designated enemy country (Germany);

4. That the property described as follows: Forty (40) shares of no par value common capital stock of MacFadden Publications Incorporated, 205 East 42nd Street, New York, New York, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered 1809, registered in the name of Theodor Mahncke, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Theodor Mahncke, the aforesaid national of a designated enemy country (Germany);

5. That the property described as follows: Two (2) shares of no par value $6.00 cumulative preferred stock of MacFadden Publications Incorporated, 205 East 42nd Street, New York, New York, a corporation organized under the laws of the State of New York, evidenced by certificate numbered 4644, registered in the name of Tikamdas Hassaram, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Tikamdas Hassaram, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

6. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany);

7. That to the extent that the person named in subparagraph 2 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 12, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10303; Filed, Nov. 24, 1948; 8:49 a. m.]

[Vesting Order 12155, Amdt.]

ANNA BECK

In re: Debt owing to Anna Beck. F-28-25157-C-1.

Vesting Order 12155, dated October 5, 1948, is hereby amended as follows and not otherwise:

By deleting subparagraph 2 of said Vesting Order 12155, and substituting therefor the following:

2. That the property described as follows: Those certain debts or other obligations, matured or unmatured, of the Superintendent of Banks for the State of Ohio as Liquidator of the Guardian Trust Company, P. O. Box No. 6537, Cleveland, Ohio, arising out of Claim No. 7-160-Savings Account No. 59117 against the aforesaid The Guardian Trust Company, a portion of which is represented by five checks dated and in the amounts as set forth below:

June 1, 1937	$99.80
Nov. 5, 1940	24.75
Aug. 11, 1942	49.90
Sept. 1, 1944	49.90
Aug. 1, 1946	24.75

said checks representing the third, fourth, fifth, sixth, and seventh dividend payments on the said Claim No. 7-160-Savings Account No. 59117, against the aforesaid The Guardian Trust Company and presently in the custody of the Superintendent of Banks for the State of Ohio, Cleveland, Ohio, and any and all rights to demand, enforce and collect the aforesaid debts or other obligations, and any and all rights in, to, and under, including particularly, but not limited to, the right to possession and presentation for collection and payment of the aforesaid checks, and any and all rights in, to, and under the aforesaid claim, including the right to receive any future payments thereunder,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany).

All other provisions of said Vesting Order 12155 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10305; Filed, Nov. 24, 1948; 8:49 a. m.]

[Vesting Order 12235]

MARGARET BONDURANT ET AL.

In re: Trust under agreement of Margaret Bondurant and Katherine Pittelkau with Winsor Calkins, trustee. File No. D-28-12048; E. T. sec. 16233.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Conrad (Konrad) Zwickel, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof, in and to and arising out of or under that certain trust agreement dated December 20, 1938, by and between Margaret Bondurant and Katherine Pittelkau, settlors, and Winsor Calkins, trustee, presently being administered by Winsor Calkins, as trustee, 210 Tiffany Building, Eugene, Oregon, is property within the United States owned or con-

trolled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 27, 1948.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 48-10334; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12236]

ELIZABETH BOWER

In re: Estate of Elizabeth Bower, also known as Lizzie Bauer, deceased. File No. D-34-804; E. T. sec. 12420.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mihal Klettner and Mary Bauer, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the estate of Elizabeth Bower, also known as Lizzie Bauer, deceased, is property payable or deliverable to, or claimed by the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by the Treasurer of the City of New York, as Depositary, acting under the judicial supervision of the Surrogate's Court, County of New York, New York;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 27, 1948.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 48-10335; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12240]

MAX KADE AND BANKERS TRUST CO.

In re: Trust agreement dated June 28, 1921 between Max Kade, settlor, and Bankers Trust Company, trustee and amendment thereto dated December 30, 1925. File D-28-8345-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Emma (Anna) Jaeger and Karl Kade, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the issue of Carl Kade, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to and arising out of or under that certain trust agreement dated June 28, 1921, by and between Max Kade, settlor, and Bankers Trust Company, trustee and amendment thereto dated December 30, 1925, presently being administered by Bankers Trust Company, trustee, 16 Wall Street, New York, New York, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof and the issue of Carl Kade, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 27, 1948.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 48-10336; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12280]

ADOLPH BOEHM

In re: Stock owned by Adolph Boehm. F-28-40-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Adolph Boehm, whose last known address is c/o Herren Schroder Gebruder & Co., Brodschrangen 35, Hamburg 11, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: All rights and interest in Prudential Investors, Incorporated (Dissolved), c/o Schroder Trust Company, Transfer Agent, 46 William Street, New York 5, New York, evidenced by a certificate numbered TCO 18392 for fifty (50) shares of no par value common capital stock of the aforesaid company, registered in the name of Adolph Boehm, including particularly any and all declared and unpaid dividends on the aforesaid stock, and any and all liquidating dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 2, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10337; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12352]

MARY BECK

In re: Rights of Mary Beck under insurance contract. File No. D-28-10912-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mary Beck, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 59 472 414, issued by the Metropolitan Life Insurance Company, One Madison Avenue, New York, New York, to Frances Maguire Wilkens, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10338; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12355]

CARL RICHARD BRUNO BRAUN

In re: Estate of Carl Richard Bruno Braun, deceased. File No. D-28-10883, E. T. sec. 15340.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Johanna Braun, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof, in and to the Estate of Carl Richard Bruno Braun, deceased, is property payable or deliverable to, or claimed by, the aforesaid national of a designated enemy country (Germany);

3. That such property is in the process of administration by the Treasurer of the city of New York, as Depositary, acting under the judicial supervision of the Surrogate's Court of Queens County, New York;

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General
Director, Office of Alien Property.

[F. R. Doc. 48-10339; Filed, Nov. 26, 1948; 8:57 a. m.]

[Supp. Vesting Order 12356]

MRS. HACHEN DENIAU

In re: Estate of Mrs. Hachen Deniau, also known as Hanchen Deniau, deceased. File No. D-28-9149; E. T. sec. 11821.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Amanda Putsche, Fritz Stubbe, Elfriede Wegner, Max Strathus, and Gerd Leitzmann, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That Harry Leitzmann, who there is reasonable cause to believe is a resident of Germany, is a national of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraphs 1 and 2 hereof, and each of them, in and to the estate of Mrs. Hachen Deniau, also known as Hanchen Deniau, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by Chester D. Gunn, as Administrator, acting under the judicial supervision of the Superior Court of the State of California, County of San Diego;

and it is hereby determined:

5. That to the extent that the persons named in subparagraphs 1 and 2 hereof, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10340; Filed, Nov. 26, 1948; 8:57 a. m.]

[Vesting Order 12357]

KATHERINE FREY DICKERSON

In re: Estate of Katherine Frey Dickerson, deceased. File No. D-28-12465; E. T. sec. 16675.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Elsa Frey, Frederick Schmidt, George Schmidt, Alfred Frey, Elsa Frey (Rude), Roselle Frey (Wentz), and Friedle Frey (Vaubenberger), whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the estate of Katherine Frey Dickerson,

deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Oakley Dickerson, as Executor, acting under the judicial supervision of the Surrogate's Court, Suffolk County, New York;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10341; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12358]

FRIDA EFFTA

In re: Rights of Frida Effta under insurance contracts. File Nos. F-28-28589-H-1, H-2, H-3, and H-4.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order, 9193, as amended, and Executixe Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Frida Effta, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under contracts of insurance evidenced by policy Nos. 71953922, 72191396, 75799472, and 75799473, issued by the Metropolitan Life Insurance Company, New York, New York, to Frida Effta, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10342; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12359]

WOLFGANG ESCHHOLZ

In re: Rights of Wolfgang Eschholz under insurance contract. File No. F-28-27672-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Wolfgang Eschholz, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 5100-EW-199, issued by the Travelers Insurance Company, 700 Main Street, Hartford, Connecticut, to Wolfgang Eschholz, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or other wise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10343; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12361]

HENRY HAMBRECHT

In re: Estate of Henry Hambrecht, deceased. File No. D-66-1580, E. T. sec. 9884.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Henry Hambrecht, William Hambrecht, and Sanchen Hambrecht, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the estate of Henry Hambrecht, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by William A. Hambrecht, as Executor, acting under the judicial supervision of the Surrogate's Court, Nassau County, New York;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10344; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12362]

TADASHI IRIYE

In re: Rights of Tadashi Iriye, also known as Tadashi Watanabe under insurance contract. File No. F-39-6087-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Tadashi Iriye also known as Tadashi Watanabe, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan);

2. That the net proceeds due to or become due under a contract of insurance evidenced by policy No. 70019, issued by the West Coast Life Insurance Company, San Francisco, California, to Tadashi Iriye also known as Tadashi Watanabe, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10345; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12367]

SHIGEO OKUTANI

In re: Rights of Shigeo Okutani under insurance contract. File No. F-39-4484-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Shigeo Okutani, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 8963175, issued by the New York Life Insurance Company, New York, New York, to Shigeo Okutani, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10346; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12370]

KURT KARL SCHAEFFER

In re: Rights of Kurt Karl Schaeffer under insurance contract. File No. F-28-24641-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kurt Karl Schaeffer, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 204975, issued by the West Coast Life Insurance Company, San Francisco, California, to Kurt Karl Schaeffer, together with the right to demand, receive, and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10347; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12371]

HEINRICH SCHWEITZER

In re: Rights of Heinrich Schweitzer under insurance contract. File No. F-28-3870 H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Heinrich Schweitzer, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 6 080 397, issued by the New York Life Insurance Company, New York, New York, to Heinrich Schweitzer, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof, is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, admin-

istered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10348; Filed, Nov. 26, 1948; 8:58 a. m.]

[Vesting Order 12373]

SABINE VOGEL

In re: Rights of Sabine Vogel under insurance contract. File No. D-28-10787-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Sabine Vogel, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 98775, issued by the Workmen's Benefit Fund, Brooklyn, New York, to Philipp Vogel, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10349; Filed, Nov. 26, 1948; 8:59 a. m.]

[Vesting Order 12375]

HANNAH WILD

In re: Rights of Hannah Wild under insurance contract. File No. F-28-24652-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Hannah Wild, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 5449997-A, issued by the Metropolitan Life Insurance Company, 1 Madison Avenue, New York, New York, to George F. Wild, together with the right to demand, receive and collect said net proceeds,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 15, 1948.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 48-10350; Filed, Nov. 26, 1948; 8:59 a. m.]

PART II

FEDERAL REGISTER

VOLUME 13 NUMBER 231

Washington, Saturday, November 27, 1948

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

REVISION OF REGULATIONS

Subsequent to the original codification, effective June 1, 1938, of Title 38—Pensions, Bonuses and Veterans' Relief, Chapter I—Veterans' Administration, of the Code of Federal Regulations, extensive changes in Veterans' Administration organization and regulations have occurred. In order to facilitate use of the material contained therein, Chapter I has been completely revised and is reprinted in this issue of the FEDERAL REGISTER.

This revision consists of all Veterans' Administration material (except descriptions of organization and locations of field establishments) currently effective as of November 1, 1948, which is required by the provisions of the Federal Register Act, as amended, and the Administrative Procedure Act to be published in the FEDERAL REGISTER and the Code of Federal Regulations.

Descriptions of organization and locations of field establishments, which are no longer subject to codification, will be subsequently published in the Notices section of the FEDERAL REGISTER.

CARL R. GRAY, Jr.,
Administrator of Veterans' Affairs.

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AUTHORITY: §§ 1.1 to 1.526 issued under secs. 1, 5, 43 Stat. 607, 608, secs. 1, 2, 46 Stat. 1016; 38 U. S. C. 2, 11, 11a, 421, 426: interpret sec. 7, 48 Stat. 9; 38 U. S. C. 707. Exception is noted at end of section affected.

DELEGATIONS OF AUTHORITY

§ 1.1 *Delegation of authority to employees to issue subpenas, etc.* (a) Deputy administrators, acting deputy administrators, assistant deputy administrators, managers of regional offices and centers having regional office activities, and such other employees to whom such authority is delegated by the Adminis-

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trator through "Administrator's Authorization Orders" shall have the power to issue subpenas for (by countersigning VA Form 2-4003) and compel the attendance of witnesses within a radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Discretion will be used in the exercise of this power which will not be used except when necessary or when the evidence cannot be obtained efficiently in any other way.

(b) Any person required by such subpena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. In case of disobedience to any such subpena, the aid of any district court of the United States or the District Court of the United State in and for the District of Columbia may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

§ 1.2 *Delegations of authority to Veterans' Administration personnel.* (a) Employees who are assigned duties which may be determined as necessitating delegated authority will be given such authority in writing through the medium of appropriate numerical series of authorization orders before being permitted to perform such duties. Any employee receiving delegated power to act, will be without authority to have any other person perform any of the duties under his delegation of authority or to sign for him, any paper covered under such authority. The Administrator will sign all delegations of authority to individuals, which, under the provisions of the acts governing the Veterans' Administration, require that specific legal authority to perform such duties be directly delegated by the Administrator. The Administrator will also sign such other authorities as he may determine necessary. All delegations of authority, not requiring direct authority from the Administrator, will be signed either by the solicitor or by the assistant administrator concerned.

(b) When it is necessary to amend the authority already delegated to an employee, the amendment will be made by the issuance of a new authorization order which will be prepared to contain a statement of the complete authority delegated to him and will cancel the old order so that no employee will have more than one authorization order of the same series in effect at any one time. Upon receipt of the new order, the employee will immediately return his old order for cancelation. Each employee will have available a copy of his delegated authority and a copy will be placed in his personnel file.

(c) When an employee to whom an authorization order has been issued leaves the service, is transferred from one station to another, or his duties are modified so as to make unnecessary the authority, his delegated authority is thereupon terminated and his authorization order will be returned for cancelation. Termination of delegated authority will be through the medium of an appropriate cancelation order in the same series and will bear the same number as the original authorization order with the added letter "A". The Administrator will sign all cancelation orders of the Administrator's authorization order series. All other series of cancelation orders will be signed by the solicitor or assistant administrator for the employees under their charge. Each office or service will maintain a complete set of copies of the active authorization orders and cancelation orders issued to employees under its charge.

(d) All authorization and cancelation orders referred to in §§ 1.1 to 1.4, inclusive, after being signed, will be sent to the regulations and procedure divisions for photostating, appropriate distribution in central office, and the maintenance of the file of original orders. The director of finance will forward copies to other Government agencies when necessary.

(e) Any employee, who is performing duties under a delegation of authority which may have been issued by memorandum, letter, or otherwise, but which should be and is not a part of any of the numerical authorization order series, will be reissued a delegation of authority covering such duties under the proper authorization order series. On and after June 30, 1937, all delegations of authority of the kind referred to herein, issued to employees of central office at any time, which are not within one of the numerical series of authorization orders, will be null and void.

§ 1.3 *Delegations of authority to central office personnel.* (a) All delegations of authority to employees of central office will be made a part of an authorization order series either of the Administrator, the solicitor, any assistant administrator, or of one of the several services, as may be applicable. All orders in the various series will be prepared naming the employee, the title of his position and his organizational assignment, and specifying exactly the authority thereby delegated to him, and will be signed in the manner specified herein. Authorization orders will be issued in numerical sequence within the series applicable to the organizational assignment of the employee and in the manner specified herein. Once a delegation of authority has been issued to an employee, it will remain in effect only so long as the employee's duties require performance under the authority, or until it is superseded by an amended order or is canceled.

(b) Delegations of authority in the "Administrator's Authorization Order" series will be issued to the assistant administrators; to the solicitor; to the chairman, board of veterans appeals; to the executive assistant to the administrator; to the employees under the chairman, board of veterans appeals; to the employees under the executive assistant; and to such other employees as may be especially determined. All such authorization orders and cancelation orders will be signed by the Administrator. For employees under the chairman, board of veterans appeals, or under the executive assistant, the orders will be signed as being recommended by the officer concerned before submission to the Administrator for approval and signature.

(c) Delegations of authority in Authorization Order series of the solicitor, of the assistant administrators, and of the services will be issued to employees under the solicitor, the assistant administrator concerned, or the service concerned, as applicable. If it is necessary that the authority be delegated to any of these employees by the Administrator as provided in § 1.2 (a), the order will be signed as being recommended by the solicitor or by the assistant administrator concerned before submission to the Administrator for approval and signature. If it is not necessary that the authority be delegated by the Administrator, the order will be signed by the solicitor for his employees and for employees in a service by the director of such service as being recommended by him before submission to the assistant administrator for approval and signature. All cancellation orders in the respective series will be signed by the solicitor or by the assistant administrator upon recommendation of the directors of services for their respective series.

§ 1.4 *Delegation of authority to employees in central office and the field to make findings of fact, etc.* (a) Employees in the field by virtue of the authority delegated to them by the Administrator will have the power to make findings of fact, determinations of existing law, Veterans' Administration regulations and precedents established thereunder, as applicable to pension and compensation cases, and to make decisions as to the rights of claimants to benefits and awards under the laws relating to the Veterans' Administration.

(b) Recommendations for the delegation of authority to a field employee to make such findings of fact, etc., will be made through the manager to the assistant administrator for claims, who will cause to be prepared an appropriate authorization order with recommendation thereon, over his signature for approval by the Administrator. This delegated authority will be made through the medium of a numerical series of orders known as "Pension Field Authorization Orders." When an employee is relieved of the duties requiring the delegated authority, the manager will immediately return his authorization order to the assistant administrator for claims. The assistant administrator thereupon will

issue a cancellation order over his own signature, sending the original copy to the budget and planning service for photostating and distribution in central office.

(c) Delegations of authority to employees in central office to make findings of fact, etc., will be in accordance with § 1.2 (a) and (c).

THE FLAG OF THE UNITED STATES FOR BURIAL PURPOSES

§ 1.10 *Eligibility for and disposition of the United States Flag for burial purposes*—(a) *Eligibility for burial flags*—(1) *Persons eligible.* (i) A veteran of any war discharged under conditions other than dishonorable.

(ii) A person discharged from the Army, Navy, Marine Corps, or Coast Guard under conditions other than dishonorable after serving at least one enlistment or discharged for disability incurred in line of duty.

(iii) *Any person who has died while in the military or naval service of the United States after May, 27, 1941, and prior to the end of the wars in which the United States is now engaged.* This phrase authorizes and requires the furnishing of a flag only in those cases where the Department of the Army or Navy, as the case may be, does not furnish a flag immediately. The only cases wherein a flag is not supplied immediately are those of persons dying while serving in the Army and whose remains are interred outside the continental limits of the United States.

(b) *Disposition of burial flags.* (1) When a flag is actually used to drape the casket of a deceased veteran, it must be delivered to the next of kin following interment.

(2) The phrase "next of kin" for the purpose of disposing of the flag used for burial purposes is defined as follows, with preference to entitlement in the order listed:

(i) Widow or widower.

(ii) Children, according to age, the sons having preference over the daughters (minor child may be issued a flag on application signed by guardian).

(iii) Father, including adopted, stepfather, and foster father.

(iv) Mother, including adopted, stepmother, and foster mother.

(v) Brothers or sisters, including brothers or sisters of the half blood.

(vi) Uncles or aunts.

(vii) Nephews or nieces.

(viii) Others—cousins, grandparents, etc. (but not in-laws).

(3) The flag used for burial purposes will not be presented to friends for their retention.

(53 Stat. 999, 57 Stat. 590, 591, 58 Stat. 301; 36 U. S. C. 183, 184, 38 U. S. C. 697c, ch. 12 note)

RELEASE OF INFORMATION CONCERNING CLAIMANTS AND BENEFICIARIES (FROM RECORDS OF THE VETERANS' ADMINISTRATION)

§ 1.500 *General.* Files, records, reports, and other papers and documents pertaining to any claim filed with the Veterans' Administration, whether pending or adjudicated, will be deemed confidential and privileged, and no disclosure thereof or information therefrom will be made except in the circumstances and under the conditions set forth in §§ 1.501–1.526, inclusive.

§ 1.501 *Release of information by the Administrator when such release would serve a useful purpose.* The Administrator of Veterans' Affairs or his designate may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

§ 1.502 *Disclosure of the amount of monetary benefits.* The monthly monetary rate of pension, compensation, retirement pay, subsistence allowance, or readjustment allowance of any beneficiary shall be made known to any person who applies for such information.

§ 1.503 *Disclosure of information to a veteran or his duly authorized representative as to matters concerning the veteran alone.* Information may be disclosed to a veteran or his duly authorized representative as to matters concerning himself alone when such disclosure would not be injurious to the physical or mental health of the veteran. If the veteran be deceased, matters concerning him may be disclosed to his widow, children, or next of kin if such disclosure will not be injurious to the physical or mental health of the person in whose behalf information is sought or cause repugnance or resentment toward the decedent.

§ 1.504 *Disclosure of information to a widow, child, or other claimant.* Information may be disclosed to a widow, widower, child, or other dependent parent or other claimant, or the duly authorized representative of any of these persons as to matters concerning such person alone when such disclosure will not be injurious to the physical or mental health of the person to whom the inquiry relates. If the person concerning whom the information is sought is deceased, matters concerning such person may be disclosed to the next of kin if the disclosures will not be injurious to the physical or mental health of the person in whose behalf the information is sought or cause repugnance or resentment toward the decedent.

§ 1.505 *Genealogy.* Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Veterans' Administration or in the case of inactive records may be released by the Archivist of the United States if in his custody.

§ 1.506 *Disclosure of records to Federal Government departments and State unemployment compensation agencies.* All records or documents required for official purposes by any department or other agency of the United States Government or any State Unemployment Compensation Agency acting in an official capacity for the Veterans' Administration shall be furnished in response to an official request, written or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

§ 1.507 *Disclosures to Members of Congress.* Members of Congress shall be furnished in their official capacity in any case such information contained in the Veterans' Administration files as may be requested for official use. However, in any unusual case, the request will be presented to the Administrator or the solicitor, or the deputy administrator or chief attorney of a branch office for personal action. When the requested information is of a type which may not be furnished a claimant, the Member of Congress shall be advised that the information is furnished to him confidentially in his official capacity and should be so treated by him. (See Vet. Reg. No. 11, 38 U. S. C. ch. 12.)

§ 1.508 *Disclosure in cases where claimants are charged with or convicted of criminal offenses.* (a) Where incompetent claimants are charged with, or convicted of, offenses other than those growing out of their relationship with the Veterans' Administration and in which it is desired to disclose information from the files and records of the Veterans' Administration, the chief attorney or the solicitor, if he deems it necessary and proper, may disclose to the court having jurisdiction so much of the information from the files and records of the Veterans' Administration relating to the mental condition of such beneficiaries, the same to be available as evidence, as may be necessary to show the mental condition of the accused and the time of its onset. This provision, however, does not alter the general procedure for handling offenses growing out of relations with the Veterans' Administration.

(b) When desired by a United States district court, the chief attorney or the solicitor may supply information as to whether any person charged with crime served in the military or naval service of the United States and whether the Veterans' Administration has a file on such person. If the file is desired either by the court or by the prosecution or defense, it may be produced only in accord with these regulations.

§ 1.509 *Disclosure to courts in proceedings in the nature of an inquest.* The solicitor, chief attorneys of branch and regional offices, and managers of hospitals are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or

conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

§ 1.510 *Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.* Copies of records from the files of the Veterans' Administration will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge; *Provided,* the claimant or his duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the solicitor or chief attorney whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, Workmen's Compensation, or similar board in which the litigation is pending upon receipt of subpena duces tecum addressed to the Administrator of Veterans' Affairs, deputy administrator, or the manager of the office in which the records desired are located. In the event the subpena requires the production of the file, as distinguished from the copies of the records, no expense to the Veterans' Administration may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpena to insure submission of the file to the court without expense to the Veterans' Administration.

§ 1.511 *Judicial proceedings generally.* (a) Where a suit has been threatened or instituted against the Government, other than for insurance under section 19 of the World War Veterans' Act, 1924, as amended, or section 617, National Service Life Insurance Act, as amended, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his duly authorized representative for information, documents, reports, etc., shall be acted upon by the solicitor in central office or the chief attorney in the branch office or in the field station who shall determine the action to be taken with respect thereto. In cases involving insurance litigation (suits for insurance filed under section 19 of the World War Veterans' Act, 1924, as amended, or section 617, National Service Life Insurance Act, as amended), the request shall be acted upon by the Director of the Service having jurisdiction over the subject matter in central office or branch office. Where the files have been sent to the Department of Justice in connection with any such suit, the request will be referred to the Department of Justice, Veterans' Affairs Section, Washington, D. C., for attention. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished as provided in paragraph (d) of this section; otherwise to the court only, and on an order of the court or subpena duces tecum addressed to the Administrator of Veterans' Affairs, deputy administrator of the branch office, or the manager of the field station in which the records desired are located requesting the same. The determination as to the action to be taken upon any order received in this class of cases shall be made by the service having jurisdiction over the subject matter in central office or branch office, or the division having jurisdiction over the subject matter in the field station, except in those cases in which the records desired are to be used adversely to the claimant, in which latter event the order of the court or the subpena will be referred to the solicitor in central office or to the chief attorney in the branch office or in the field station for disposition.

(b) Where the process of a United States court requires the production of documents or records (or copies thereof) contained in the Veterans' Administration file of a claimant, such documents or records (or copies) will be produced in the court out of which process has been issued. Where original records are produced, they must remain at all times in the custody of a representative of the Veterans' Administration, and, if offered and received in evidence, permission should be obtained to substitute a copy so that the original may remain intact in the file. Where the subpena is issued praecipe of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by § 1.526 (g) and any other costs incident to production.

(c) Where copies of documents or records are requested by the process of any State or municipal court, the process when presented must be accompanied either by authority from the claimant concerned to comply therewith or by an affidavit of the attorney of the party securing the same, setting forth the character of the pending suit, the purpose for which the documents or records sought are to be used as evidence, and, if adversely to the claimant, information from which it may be determined whether the furnishing of the records sought is necessary to prevent the perpetration of a fraud or other injustice. Where the process received is accompanied by authorization of the claimant to comply therewith, copies of the records requested shall be furnished to the court upon the payment of the prescribed fee by the party who caused the process to be issued. Where the process shows that the records are to be used adversely to the claimant, the averments contained in the affidavit shall be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the records is necessary and proper to prevent a fraud or other injustice, the records requested shall be furnished in response to the court's process upon the payment of the fee as prescribed by the schedule of fees by the party who caused the process to be issued; otherwise, the court shall be advised that Veterans' Administration records are confidential and privileged. Where the process received requests the production of the complete Veterans' Administration file of a claimant and compliance is deemed necessary and proper under this paragraph, no expense to the Veterans' Administration may be involved in complying therewith and arrangements must be made with the attorney of the party causing issuance of the process to insure the submission of the file to the court without expense to the Veterans' Administration. The file must remain at all times in the custody of a representative of the Veterans' Administration, and, if there is an offer and admission of any record or document contained therein, permission should be obtained to substitute a copy so that the original may remain intact in the file.

(d) Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a subpena or court order, will be handled by the service or division having jurisdiction over the subject matter. If the request is such as can be complied with under § 1.503 or § 1.504, the records requested will be furnished upon receipt of the required fee. If, however, the records cannot be furnished under such sections, the applicant will be advised of the procedure to obtain copies of records for court use as set forth above.

(e) In suits by or against the Administrator under section 509, title III, Servicemen's Readjustment Act of 1944, as amended, the files pertaining to the guaranteed or insured loan may be made available by the solicitor or the chief attorney subject to the usual rules of evidence.

§ 1.512 *Disclosure of loan guaranty information.* In general, the facts in loan guaranty files will be made available to any party privy to a guaranteed or insured loan if deemed proper by a

loan guaranty officer or chief attorney. Information in the claims folder, insurance or other file will be released to lenders or prospective lenders only in accord with the regulations in this part: *Provided,* That the fact of adjudication of incompetency by court or rating board may be made known in appropriate circumstances to a lender or prospective lender.

§ 1.513 *Disclosure of information contained in military and naval service and related medical records received by the Veterans' Administration from the National Military Establishment.* (a) *Service records.* Information received by the Veterans' Administration from the Departments of the Army, Navy, Air Force, and the Treasury Department relative to the military or naval service of a claimant is furnished solely for the official use of the Veterans' Administration, but such information may be disclosed under the limitations contained in §§ 1.501 to 1.526.

(b) *Medical records.* Information contained in the medical records (including clinical records and social data) may be released under the following conditions:

(1) Complete transcript of résumé of medical records on request to:

(i) The Department of the Army.

(ii) The Department of the Navy (including naval aviation and United States Marine Corps).

(iii) The Department of the Air Force.

(iv) The Treasury Department (Coast Guard).

(v) Selective Service (in case of registrants only).

(vi) Federal or State hospitals or penal institutions when the veteran is a patient or inmate therein.

(vii) United States Public Health Service, or other governmental or contract agency in connection with research authorized by, or conducted for, the Veterans' Administration.

(viii) Registered civilian physicians, on the request of the individual or his or her legal representative, when required in connection with the treatment of the veteran. (The transcript or résumé should be accompanied by the statement "it is expected that the information contained herein will be treated as confidential, as is customary in civilian professional medical practice.")

(ix) The veteran on request, except information contained in the medical record which would prove injurious to his or her physical or mental health.

(x) The next of kin on request of the individual, or legal representative, when the information may not be disclosed to the veteran because it will prove injurious to his or her physical or mental health, and it will not be injurious to the physical or mental health of the next of kin or cause repugnance or resentment toward the veteran; and directly to the next of kin, or legal representative, when the veteran has been declared to be insane or is dead.

(xi) Health and social agencies, on the authority of the veteran or his duly authorized representative.

(2) In addition to the above, the Department of Justice, the Treasury Department, and the Post Office Department may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

(3) Compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions will be effected in accordance with § 2.511.

§ 1.514 *Disclosure to private physicians and hospitals other than Veterans' Administration.* When a beneficiary elects to obtain medical attention from a private practitioner or in a hospital other than a Veterans' Administration hospital, there may be disclosed to such private practitioner or head of such hospital (State, municipal, or private) such information as to the medical history, diagnosis, findings or treatment, as is requested, provided there is also submitted a written authorization from the beneficiary, or in the event he is incompetent, from his representative or his nearest relative, for release of desired data. The said information will be supplied without charge directly to the private physician or hospital head and not through the beneficiary. In forwarding this information, it will be accompanied by the stipulation that it is released with the consent of the patient and then only on condition that it is to be treated as a privileged communication. However, such information may be released without charge and without consent of the patient, his representative, or nearest relative when a request for such information is received from the superintendent of a State hospital for psychotic patients, or from a commissioner, department of mental hygiene or comparable State agency.

§ 1.515 *To commanding officers of State soldiers' homes.* When a request is received in a Veterans' Administration regional office, center, or hospital from the commanding officer of a State soldiers' home for information other than information relative to the character of the discharge from a Veterans' Administration center or hospital concerning a veteran formerly domiciled or hospitalized therein, the provisions of § 1.500 are applicable, and no disclosure will be made unless the request is accompanied by the authorization outlined in § 1.503. However, managers of regional offices, centers, and hospitals, upon receipt of a request from the commanding officer of a State soldiers' home, for the character of the discharge of a veteran from a period of hospital treatment or domiciliary care as a beneficiary of the Veterans' Administration, will comply with the request, restricting the information disclosed solely to the character of the veteran's discharge from such treatment or care. Such information will be disclosed only upon receipt of a specific request therefor from the commanding officer of a State soldiers' home.

§ 1.516 *Disclosure of information to undertaker concerning burial of a deceased veteran.* When an undertaker requests information believed by him to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's adjusted service certificate or Government insurance policy; name and address of the next of kin; rank or grade of veteran and organization in which he served; character of the veteran's discharge; or date and place of birth of the veteran and it appears that the undertaker is holding the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of an adjusted service certificate or Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the certificate or policy or furnished information not specifically mentioned herein.

§ 1.517 *Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Veterans' Administration.* The assistant administrator for vocational rehabilitation and education or his designate is authorized to release information available only in vocational rehabilitation and education records regarding individual veterans to educational institutions cooperating with the Veterans' Administration in the vocational rehabilitation and education of veterans of World War II, for the purpose of making studies, inquiring into the rehabilitation of veterans, counseling techniques and training courses utilized to achieve such rehabilitation: *Provided,* That any data or information obtained shall not be published without the approval of the assistant administrator for vocational rehabilitation and education or his designate and that such data or information shall not identify any individual.

§ 1.518 *Addresses of claimants.* (a) It is the general policy of the Veterans' Administration to refuse to furnish addresses from its records to persons who desire such information for purposes of debt collections, canvassing, or harassing a claimant.

(b) The address of a Veterans' Administration claimant as shown by Veterans' Administration files may be furnished to duly constituted police or court officials upon official request and the submission of a certificate copy either of the indictment returned against the claimant or of the warrant issued for his arrest. Such request shall be forwarded for disposition to the operating service having jurisdiction over the subject matter or possession of the file.

(c) When an address is requested that may not be furnished under §§ 1.500 to 1.526, the person making the request will be informed that a letter enclosed in an unsealed envelope bearing sufficient postage, without return address, with the name of the addressee thereon will be forwarded by the Veterans' Administration, but this provision will be applicable only when it does not interfere unduly with the functions of the service or division concerned. In no event will letters be forwarded to aid in the collection of debts.

§ 1.519 *Lists of Claimants.* Lists of claimants will not be furnished except as the Administrator may direct.

§ 1.520 *Confidentiality of social data.* Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran himself have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient's self-revelations without reproaching him for his behavior or arousing natural curiosity or suspicion regarding any informant's statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.

§ 1.521 *Special restrictions concerning Social Security Records.* All information received from the Social Security Administration except that furnished in connection with the operation of Public Law 719, 79th Congress, will be treated as strictly confidential and will not be disclosed to anyone other than an employee of the Veterans' Administration entitled to such information in the discharge of his official duties. When not being reviewed by an authorized employee, the correspondence containing the information will be placed in a large envelope, sealed, and securely fastened on the left side of the case file. There will be placed in this envelope a sheet of paper on which the employee sealing the envelope will endorse his name, designation, and date of sealing and which will be similarly endorsed by all other employees who subsequently have occasion to refer to such information. A new envelope will be used each time the information is examined, and the following notation will be typed on each envelope so used: "Confidential under section 1106, Social Security Act, as amended (53 Stat. 1398, 42 U. S. C. A. 1306). Not to be opened by any person other than an employee of the Veterans' Administration charged with the duty of examining claims and then not in the presence of any person not so authorized. This envelope contains confidential information which shall not be revealed under penalty of law to anyone other than an employee of the Veterans' Administration charged with the duty of examining this case, and it will at all times be kept sealed, except as herein provided."

§ 1.522 *Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.* Determination of the question when disclosure of information from the files, records and reports, will be prejudicial to the mental or physical health of a claimant, beneficiary, or other person in whose behalf information is sought will be made by the chief medical director, central office; branch medical director, branch office; chief medical officer in the regional office or center; or the clinical director of a hospital, or their physician designates.

§ 1.523 *Veterans' Administration installation from which authorized disclosure will be made.* Where disclosure of information from the files, records, reports, and other papers and documents pertaining to claims filed with the Veterans' Administration is not restricted, such disclosure shall be made by the service division, or activity in central office, branch office, regional or Veterans' Administration office, hospital, or center having possession of the individual record or file from which the information is to be disclosed.

§ 1.524 *Persons authorized to represent claimants.* A duly authorized representative will be any person authorized in writing by the claimant to act for him, or his legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his wife, his children, or, if the claimant is unmarried, either of his parents shall be recognized as the fiduciary of the claimant.

§ 1.525 *Inspection of records by or disclosure of information to recognized representatives of organizations.* (a) (1) The accredited representatives of any of the organizations recognized under section 200, Public No. 844, 74th Congress (act of June 29, 1936), holding appropriate power of attorney may inspect the Veterans' Administration file of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him to the claimant or, if the claimant is incompetent, to his legally constituted fiduciary. All other information in the file shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Veterans' Administration of the claim of the claimant. The managers of field stations and the directors of the services concerned in central office and branch office will each designate a responsible officer to whom requests for all files must be made.

(2) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Veterans' Administration the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative. In any case where there is an unrevoked power of attorney, no persons or organizations other than the one named in the power of attorney shall be afforded information from the file; and when any claimant has filed notice with the Veterans' Administration that he does not want his file inspected, such file will not be made available for inspection.

(b) (1) Inspection of folders by accredited representatives shall be in space assigned for such inspection; however, where space or other local problems make it impractical to assign space for this purpose the assistant administrator or comparable official concerned in central office or the deputy administrator or manager at the particular office affected may permit inspection of folders at the desks of the accredited representatives in the office(s) which they regularly occupy. Deputy administrators and managers and directors of the services concerned in central office will designate and assign, in or near the space occupied by accredited representatives, one or more employees to whom the folders will be charged and who will at all times know and have a record of the location of such folders during the time they are made available for inspection by the accredited representatives.

(2) When it is necessary that folders which are being inspected by accredited representatives be carried elsewhere within the installation for purposes of official discussion or presentation of claims, such folders shall be carried by Veterans' Administration employees, however, where it is not feasible to use Veterans' Administration employees for these purposes, the deputy administrator or manager or the director of the service concerned in central office may permit the folders to be carried by the accredited representatives, *Provided,* the designated Veterans' Administration employee to whom the folders are charged is at all times kept informed of their location.

(3) No person other than a Veterans' Administration employee in the performance of his official duties may inspect an insurance file except:

(i) An authorized representative of the insured, or, after maturity of the insurance by death of the insured, of the designated beneficiary, shall, if holding valid power of attorney, be permitted to inspect the file containing the basic papers concerning the insurance for the

purpose of assisting the insured in adjusting any phase of the insurance or the insured or designated beneficiary in perfecting a claim for any benefit under the policy.

(ii) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative shall not release information as to designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§ 1.500 to 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Veterans' Administration personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Veterans' Administration personnel for adjudication purposes will not be inspected by anyone other than those employees of the Veterans' Administration whose duties require same for the purpose of clinical diagnosis or medical treatment.

(5) Under no circumstances shall any paper be removed from a file, except by a Veterans' Administration employee, for purpose of having an authorized photostat made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the Solicitor or chief attorney, except that in insurance suits under the World War Veterans Act, 1924, as amended, or the National Service Life Insurance Act, 1940, as amended, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the department of justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Deputy administrators and managers and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files will be brought to the immediate attention of the Administrator.

(d) Any person holding power of attorney or accredited representative of a recognized organization holding such power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney may continue to act until the action is completed except where the power of attorney is filed on behalf of the dependent.

(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.

§ 1.526 *Copies of records and papers.* (a) Any person desiring a copy of any record or document in the custody of the Veterans' Administration, which is subject to be furnished under §§ 1.501–1.526, inclusive, must make written application for such copy to the Veterans' Administration installation having custody of the subject matter desired, stating specifically (1) the particular record or document the copy of which is desired and whether certified or uncertified; (2) the purpose for which such copy is desired to be used.

(b) When copies of a record or document are furnished under §§ 1.506, 1.507, 1.510 and 1.514, such copies shall be supplied without charge.

(c) Where only one or a relatively few copies of papers from a claimant's file are desired by the veteran or a dependent for use in securing one of the governmental benefits or in connection with a claim for commercial insurance, the workmen's compensation or similar benefit, the necessary copies may in the discretion of the manager, deputy administrator, or staff member in central office having jurisdiction in the matter be supplied without charge.

(d) When information, statistics, or reports are released or furnished under §§ 1.501 or 1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(e) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in this regulation. The desired copy will not be delivered until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned to the applicant. When a deposit is received with an application, such deposit will be returned to the applicant should the application be denied.

(f) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in § 1.513.

(g) Schedule of fees:

Written copies, per 100 words	$0.25
Photostat copies, per sheet	.25
Certifications, each	.25

(h) Those Veterans' Administration installations not having photostat equipment are authorized to arrange with the nearest Veterans' Administration installation having such equipment to make the necessary authorized photostatic copies of records or documents.

PART 3—VETERANS CLAIMS

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PROVISIONAL REGULATIONS

AUTHORITY: §§ 3.0 to 3.139 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707. §§ 3.141 to 3.178 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707; interpret secs. 8, 9, 43 Stat. 1306, 1307, sec. 3, 48 Stat. 9; 38 U. S. C. 473–491, 703. §§ 3.184 to 3.347 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707. §§ 3.350 to 3.359 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707; interpret secs. 1, 2, 45 Stat. 735, 736, sec. 10, 48 Stat. 10; 38 U. S. C. 581, 582, 710. §§ 3.1000 to 3.1221 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707. Statutes giving special authority are cited in parentheses at the end of affected sections.

SERVICE REQUIREMENTS

§ 3.0 *World Wars I and II.* (a) The beginning and termination dates of World War I are April 6, 1917, and November 11, 1918, but as to service in Russia, the ending date is April 1, 1920. Except as to emergency officers retirement pay, re-enlistment in the military or naval service on or after November 12, 1918, and before July 2, 1921, where there was prior active service between April 6, 1917, and November 11, 1918, shall be considered as World War I service under the laws providing compensation or pension for World War I veterans and their dependents. (38 U. S. C. Ch. 12, Reg. 1 (a) Part 1; section 5, Public No. 304, 75th Congress.)

(b) World War II shall comprise the period from December 7, 1941, to twelve o'clock noon, December 31, 1946, both dates inclusive (sec. 9 (a), Pub. Law 144, 78th Cong.). (By virtue of Part II, Veterans' Regulation No. 1 (a), as amended by Public Law 359, 77th Congress, disabilities incurred or aggravated in an enlistment or employment entered into after twelve o'clock noon, December 31, 1946, and suffered prior to the official termination of the war, are compensable at Regulation No. 1 (a), Part I, as amended, rates.) (Sec. 4, 48 Stat. 9, sec. 5, 50 Stat. 661, sec. 9a, 57 Stat. 556; 38 U. S. C. 424a, 704, ch. 12 note.)

§ 3.1 *Persons included in the acts in addition to commissioned officers and enlisted men*—(a) *Field clerks, Quartermaster's Corps.* Field clerks, Quartermaster's Corps, are included as enlisted men.

(b) *Army field clerks.* Army field clerks had the same military status as field clerks, Quartermaster's Corps, and are included as enlisted men.

(c) *Philippine Scouts and others.* Philippine Scouts, the Insular Force of the Navy, Samoan Native Guard and Samoan Native Band of the Navy are within the terms of the acts, except that neither the Philippine Scouts nor the Insular Force of the Navy were, or are included in Article II of the War Risk Insurance Act. However, Philippine Scouts enlisted under section 14 of Public Law 190, 79th Congress, approved October 6, 1945, are subject to the limitations contained in Public Law 391, 79th Congress. Benefits are accordingly limited to compensation payable for service-connected disability or death. Members of the organized military forces of the Government of the Commonwealth of the Philippines are included for purposes of the laws administered by the Veterans' Administration providing for the payment of compensation on account of service-connected disability or death from and after the dates and hours, respectively, that they were called into service of the armed forces of the United States by orders issued from time to time by the General Officer, United States Army, designated by the Secretary of War (sec. 2, (a) (12), Public No. 127, 73d Cong. and Public Law 301, 79th Cong.). Service of such Commonwealth forces in the United States armed forces was terminated as

of June 30, 1946, by the military order of the President dated July 1, 1946. (Therefore, such Philippine Army service rendered on or after July 1, 1946, is not service in the United States armed forces within the purview of the laws administered by the Veterans' Administration.) Compensation payable to members of the organized military forces of the Government of the Commonwealth of the Philippines, under the conditions set forth above, and to Philippine Scouts who enlisted under section 14, Public Law 190, 79th Congress, shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such compensation.

(d) *Students in aviation camps.* Students in aviation camps who were enlisted men are included.

(e) *Commissioned officers, Public Health Service.* Officers of the Public Health Service who were detailed for duty with the Army or Navy are included as officers in the active service. On or after November 11, 1943, commissioned officers of the Public Health Service, regular and reserve, who are (1) detailed for duty with the Army, Navy, or Coast Guard; (2) serving in time of war outside the continental limits of the United States or in Alaska, regardless of whether the disability or death was suffered prior or subsequent to November 11, 1943; *Provided, however,* That benefits may not be awarded for any period prior to November 11, 1943; or (3) who perform active service in time of war and following the issuance of an Executive order declaring the commissioned corps of the Public Health Service a part of the military forces of the United States, are also included. In regard to (3) above, the Executive order was published on June 29, 1945, effective July 29, 1945; hence, on and after the latter date and for the duration of World War II the above described commissioned officers of the Public Health Service, with respect to active service performed, shall be considered as in active military or naval service and included within the acts administered by the Veterans' Administration (sec. 212, Pub. Law 410, 78th Cong.; Executive Order No. 9575).

(f) *Male nurses, enlisted.* Male nurses who were enlisted men of the Medical Department are included.

(g) *Retired officers or men ordered to active duty.* Officers and men on the retired list who were ordered to active duty by the War Department or Navy Department were in active service and are included.

(h) *Personnel of Lighthouse Service.* The personnel of the Lighthouse Service transferred to the service and jurisdiction of the War and Navy Departments by Executive order pursuant to the act of August 29, 1916, are included.

(i) *Army Nurse Corps, Navy Nurse Corps and female dietetic and physical therapy personnel.* Members of the Army Nurse Corps (female) and the Navy Nurse Corps (female) when employed in the active service under the War Department or Navy Department. Female dietetic and physical therapy personnel (exclusive of students and apprentices) appointed with relative rank on or after December 22, 1942 (Public Law 828, 77th Cong.), or commissioned on or after June 22, 1944 (Public Law 350, 78th Cong.).

(j) *Alien beneficiaries.* A veteran discharged for alienage during a period of hostilities is ineligible for benefits, unless he can establish that it was not pursuant to his own request. However, such a veteran, if discharged for alienage after the termination of hostilities and if his service was honest and faithful is not barred from benefits if he is found to be otherwise entitled thereto.

(k) *Members of training camps authorized by law.* Members of training camps authorized by section 54 of the National Defense Act, are included. Members of the National Guard ordered to active duty for training are not, under section 112 of the National Defense Act of June 3, 1916, as amended June 15, 1933, entitled to compensation. Reserve officers and members of the enlisted reserves of the United States Army, Navy, or Marine Corps, ordered to active duty, including duty for training, are entitled to compensation under Public No. 159, 75th Congress. However, such benefits shall not be payable prior to the date of claim or June 23, 1937, whichever is the later. Reserve personnel of the Navy and Marine Corps suffering disability while on active duty for training purposes, are compensable after June 30, 1925, and prior to June 23, 1937, under the United States Employees Compensation Act. From and after June 23, 1937, such personnel have an election between United States employees compensation and compensation under Public No. 159, 75th Congress. In the event an Army reservist is or becomes eligible for the benefits of the United States Employees Compensation Act (Public No. 179, 76th Congress, approved July 15, 1939, and Public No. 747, 76th Congress, approved July 18, 1940), and is also eligible for, or is in receipt of compensation based upon military service, he shall elect which benefit to receive. On or after April 3, 1939, all officers, warrant officers, and enlisted men of the Army of the United States, other than the officers and enlisted men of the regular Army, if called or ordered into the active military service by the Federal Government for extended military service in excess of thirty days, and who suffer disability in line of duty from disease or injury incurred while so employed shall be deemed to have been in the active military service during such period and shall be entitled to the benefits provided by section 5, Public No. 18, 76th Congress. Reserve officers who may have a right to benefits under section 5, Public No. 18, 76th Congress, for disability incurred prior to July 15, 1939, who filed claim within one year from July 18, 1940, have an election under Public No. 747, 76th Congress, but reserve officers who are entitled to benefits under section 5, Public No. 18, 76th Congress, for disability incurred on or subsequent to July 15, 1939, do not have such an election. On and after September 26, 1941, reserve officers, Army of the United States, who were called or ordered into the active military service by the Federal Government for extended military service in excess of thirty days on or subsequent to February 28, 1925, other than for service with the Civilian Conservation Corps, and who are now disabled from disease or injury contracted or received in line of duty while so employed, shall be deemed to have been in the active military service during such period and shall be entitled to the benefits provided by Public Law 262, 77th Congress.

(l) *Cadets and midshipmen.* Cadets and midshipmen suffering from disabilities incurred in the line of duty while assigned to duties constituting war service, which includes practice cruises at sea but excludes practice maneuvers at West Point, during the period of one of the hostilities enumerated in Veterans' Regulation No. 1 (a), as amended, (38 U. S. C. ch. 12), are entitled to compensation for such disability at the rate provided in Veterans' Regulation No. 1 (a), Part I, as amended, if otherwise entitled. Cadets and midshipmen who are disabled by reason of a wound or injury received or a disease contracted while pursuing the prescribed course of instruction at the academies and in line of duty are entitled to compensation at the rate prescribed in Veterans' Regulation No. 1 (a), Part II, if otherwise entitled. Midshipmen assigned to practice cruises or cadets or midshipmen otherwise actually assigned to active duty for a total of at least ninety days during a period of hostilities enumerated in Veterans' Regulation No. 1 (a), as amended, who are now suffering from a disability permanent and total in degree, but which is not connected with any period of service, are entitled to a pension at the rate prescribed in Veterans' Regulation No. 1 (a), Part III, if otherwise entitled. Service as a cadet at the United States Military Academy or as a midshipmen at the United States Naval Academy or as a cadet at the United States Coast Guard Academy on or after December 7, 1941, and before twelve o'clock noon, December 31, 1946, shall be considered active military or naval service in World War II for the purposes of laws administered by the Veterans' Administration (Sec. 10, Public Law 144, 78th Cong.)

(m) *Under Public No. 2, 73d Congress and Public Law 300, 78th Congress.* (1) Persons who on or after April 6, 1917, and prior to November 12, 1918, applied for enlistment or enrollment in the active service who were provisionally accepted and ordered to report to a place for final acceptance or who were drafted and after reporting pursuant to call of their local draft board, or who were called into the Federal service as members of the National Guard but before enrollment for Federal service suffered an injury or disease in line of duty, are included.

(2) (i) Any person who on or after August 27, 1940, and prior to twelve o'clock noon, December 31, 1946, has applied or shall hereafter apply for enlistment or enrollment in the active military

or naval forces and who was or shall be provisionally accepted and directed or ordered to report to a place for final acceptance into such military or naval service, or who was or is selected for service and after reporting pursuant to the call of his local board and prior to rejection, or who after being called in the Federal service as a member of the National Guard but before being enrolled for the Federal service suffered or shall suffer an injury or a disease in line of duty and not the result of his own wilful misconduct, is included: *Provided,* That payments of compensation under the terms of this subparagraph shall not be effective prior to May 11, 1944.

(ii) The provisions of Public Law 300, 78th Congress, attach whenever a person is acting pursuant to an order of his draft board, including an order to report to the board for a preinduction examination. The protection covers any injury or disease which is or was acquired during time spent away from home or en route home in connection with such order and as a result thereof. An injury or disease which is or was suffered on the trip when reporting for active duty or final induction is covered. The injury or disease to be pensionable must be attributable to some cause or factor relating to his activity in connection with complying with proper orders. These provisions do not extend to such persons as to disease or injury suffered during the period of inactive duty or period of waiting after passing final physical examination and prior to beginning the trip to report for induction. Such protection also applies to a member of the National Guard after he reports to a designated rendezvous pursuant to proper call.

(n) *Women citizens of the United States.* Women citizens of the United States who were taken from the United States by the United States Government and who served in base hospitals, overseas, including reconstruction aides and stenographers who served so, are included.

(o) *Commissioned officers of the Coast and Geodetic Survey.* Pursuant to section 2, Public Law 786, 77th Congress, commissioned officers of the Coast and Geodetic Survey who are assigned, (1) during the period of World War II to duty on projects for the War Department or the Navy Department in areas outside the continental United States or in Alaska, or (2) in coastal areas of the United States, determined by the War or Navy Department to be of immediate hazard, shall while on such duty be considered as performing active military or naval service: *Provided,* (3) Commissioned officers of the Coast and Geodetic Survey serving in the Philippine Islands on December 7, 1941, will be considered as in the active military or naval service from and including that date: *Provided,* That compensation under this act may not be awarded concurrently with United States employees compensation; *And provided further,* That benefits may not be awarded prior to December 3, 1942.

(p) *Commissioned officers and enlisted personnel of the women's Army Corps.* On and after July 1, 1943, commissioned officers and enlisted personnel of the Women's Army Corps, from the date of commission or enlistment, shall be entitled to the same rights, privileges and benefits as members of the Officers' Reserve Corps or enlisted men of the United States Army, respectively. (Public Law 110, 78th Congress.)

(q) *Commissioned or enlisted members of the Women's Reserve of the Navy, Marine Corps or Coast Guard.* On or after November 8, 1943, commissioned or enlisted members of the Women's Reserve of the Navy or Marine Corps, and on or after December 23, 1943, commissioned or enlisted members of the Women's Reserve of the Coast Guard are entitled to pension for disability incurred in or aggravated by active service in the Navy, Marine Corps or Coast Guard in line of duty.

(r) *Coast Guard.* Personnel of the United States Coast Guard who served on or after January 28, 1915. (Acts of July 2, 1930, and July 18, 1941.) (*Provided,* That no award of disability compensation under Public Law 182, 77th Congress, to former personnel of the United States Coast Guard who served on or after January 28, 1915, and prior to July 2, 1930, shall be effective prior to the date of receipt on or after July 18, 1941, of an acceptable application, formal or informal, as required in disability claims generally.)

(s) Personnel of the National Guard or the National Guard of the United States, while in the active service of the United States.

(t) Pay clerks in the Navy.

(u) Paymaster clerks while serving under a commission from the Secretary of War.

(v) Members of the Naval Academy Band on and after April 12, 1910.

(w) Men inducted for training and service under Public No. 783, 76th Congress. (Section 3 (d), Public No. 783, 76th Congress.)

(x) *Public No. 140, 73d Congress.* Any officer (including warrant and reserve officers) or enlisted man who served according to the provisions of that act and during the period specified therein.

(y) Paymaster clerks in the Marine Corps.

(Sec. 1, 46 Stat. 847, secs. 2, 4, 48 Stat. 9, 456, 508, 50 Stat. 305, 55 Stat. 598, 733, secs. 1, 2, 56 Stat. 1020, 1038, 1072, sec. 10, 57 Stat. 371, 556, 586, sec. 212, 58 Stat. 219, 324, 689, 60 Stat. 223; 10 U. S. C. 336, 28 U. S. C. 375, 33 U. S. C. 855a, 34 U. S. C. 857a, 37 U. S. C. 113 note, 38 U. S. C. 121, 238, 238c–e, 704, 730, ch. 12 note, 42 U. S. C. 213, 48 U. S. C. 1232, 50 U. S. C. 301, 50 App. U. S. C. 1591–1598)

§ 3.2 *Persons not included in the acts*—(a) *Cadets and Cadet Engineers, Coast Guard.* Cadets at the Coast Guard Academy and Cadet Engineers in the Coast Guard who were not assigned to active service are not included unless they served as cadets at the Coast Guard Academy on or after December 7, 1941, and before twelve o'clock noon, December 31, 1946. (See § 3.1 (l).)

(b) *Russian Railway Service Corps.* Men in the Russian Railway Service Corps are not included.

(c) *Draftsmen in the Engineer Corps.* Draftsmen in the Engineer Corps were civilian employees in the Military Establishment obtained by the Department through the Civil Service and are not included.

(d) *Field clerks, Engineer Corps.* The so-called field clerks in the Engineer Corps were civilian employees who had no military status and are not included.

(e) *Civilian field clerks, Signal Corps.* Civilian field clerks, Signal Corps, were civilian employees in the Military Establishment and are not included.

(f) *Postal agents in France.* Postal agents sent to France by the Post Office Department to handle field mail for the troops were civilian employees and are not included.

(g) *Organized military forces of the government of the Commonwealth of the Philippines.* Service in such organizations on or after July 1, 1946, is not service in the United States armed forces within the purview of the laws administered by the Veterans' Administration. (Military order of the President dated July 1, 1946.)

(h) *Temporary members of the Coast Guard Reserve.* Members of such Reserve are not within the purview of the laws governing the Veterans' Administration. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704.)

JURISDICTION

§ 3.3 *Jurisdiction of adjudication division.* Within the jurisdiction of field adjudication activities, the adjudication division in each regional office or center, under the direction of an adjudication officer, will be responsible for the preparation and adjudication of claims for disability compensation or pension and determining, upon proper request, service connection for the condition or conditions for which out-patient treatment only is requested; for determining whether the character of discharge is a bar to benefits, including benefits under Titles II, III and V of Public Law 346, 78th Congress, as amended, and hospital treatment, domiciliary care, and out-patient treatment for service-connected disabilities under Public No. 2, 73d Congress, as amended, in doubtful cases; for determining whether disabilities are service-connected and compensable for purposes of vocational rehabilitation; for determining whether the injury or disability for which discharged, in those instances where the veteran served less than ninety days, was incurred or aggravated in line of duty for the purposes of Titles II, III and V, Public Law 346, 78th Congress, as amended; for the preparation and adjudication of claims involving Public Law 314, 78th Congress. (Sec. 7, 48 Stat. 9, 58 Stat. 230; 38 U. S. C. 707, 26c)

§ 3.4 *Jurisdiction of authorization unit.* The authorization unit will have jurisdiction over the determination of

basic eligibility for monetary benefits in claims under the jurisdiction of the field office; the development of claims in conformity with established Veterans' Administration policy; the adjudication of all claims upon completion of rating action; the maintenance of such follow-up procedure as may be required (this does not apply to follow-up of requested physical examinations); the development and certification of appeals; the certification, upon proper request, of data for consideration in determining eligibility for domiciliary care or hospital or out-patient treatment; the determination whether the character of discharge is a bar to benefits including benefits under Titles II, III and V of Public Law 346, 78th Congress, as amended, and hospital treatment, domiciliary care, and out-patient treatment for service-connected disabilities, under Public No. 2, 73d Congress, as amended, in doubtful cases; the furnishing of technical information, through correspondence or otherwise, to veterans or their representatives in explanation of action taken upon individual claims, and the carrying out of such duties in relation to the foregoing and adjudication matters, general or otherwise, as may be properly assigned by central office or the branch office. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.5 *Jurisdiction of rating board.* (a) The rating boards are vested with authority to determine questions of service connection of disability flowing from diseases and injuries (including such determinations for purposes of Public Law 346, 78th Congress, as amended), in cases in which the jurisdiction is temporarily or permanently vested in the field office concerned; to determine the necessity for, type of, sufficiency of, and appropriate date of examinations and re-examinations, including hospitalization for observation, for rating purposes; to determine and to evaluate the disability resulting from each and from all such diseases and injuries and to determine whether any such disease or injury is due to the wilful misconduct or misconduct of the veteran; to determine the competency or incompetency of claimants in proper cases; to determine whether the veteran was insane at time of commission of offense resulting in discharge otherwise precluding entitlement to benefits; to determine whether children of veterans are insane, idiotic or otherwise helpless by reason of mental or physical condition; to determine entitlement under section 31, Public No. 141, 73d Congress, as amended by section 12, Public No. 866, 76th Congress and under paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended. (38 U. S. C. ch. 12)

(b) The rating boards will have original jurisdiction to rate claims involving disability compensation or pension under the jurisdiction of the field office.

(c) All decisions will be rendered in executive session only after group deliberation participated in by each of the three rating specialists, and will represent a group decision, for the completeness and accuracy of which each of the signatory members will be responsible. The decision of two concurring members will constitute the decision of the board.

(d) In the event of a dissenting opinion by a rating specialist or a member of the central disability board, no payment will be made based upon the decision, until it has been authoritatively determined whether an appeal will be taken. If appeal from any decision is taken by any of the officials designated in § 19.7 of this chapter, no change in payments, based on the decision appealed from, will be made until a decision is rendered by the board of veterans appeals and the case file is returned to the appropriate activity.

(e) If it is decided that an appeal is to be taken by one of the officials designated in § 19.7 of this chapter the claimant or his representative will be promptly informed concerning the question at issue and concerning his right of appearance or representation before the rating board or the board of veterans' appeals. As provided in Veterans' Administration adjudication procedures, the formal hearing in the field office will be in lieu of a formal hearing before the board of veterans' appeals, except in the unusual case when a special appearance by the veteran or his representative before the board of veterans appeals may be considered necessary. The hearing will not be accepted to serve as a basis for reversal of the majority decision, but such action as may be indicated will be taken where new and material evidence is submitted or where the further development of evidence would appear to be advisable on information submitted by or in behalf of the claimant. A transcribed record of the hearing will be filed. If, upon being informed of the administrative appeal, the claimant or his representative elects to present additional evidence or argument in support of the administrative appeal, such election will be deemed to be an appeal, and the two appeals will be merged and considered in accordance with the provisions of § 3.328. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.6 *Decisions to conform to existing laws, regulations, and defined policies.* All decisions will conform strictly to the laws, regulations, Administrator's Decisions and defined policies as enunciated by the Administrator. All opinions of the solicitor which constitute a precedent are embodied either in Administrator's Decisions or opinions which are approved by the Administrator. Conclusions reached in individual cases are frequently influenced by peculiar facts or local statutes and, consequently, will not be followed as precedents. However, where it is apparent beyond question that the situation is identical, such conclusions may be followed as a matter of consistency in the adjudication of claims under the law or regulations applicable. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.7 *Information on all decisions to be furnished to veterans.* The claimant will, in all cases in which he appears personally before a rating board, be informed by the board of the decision reached and the reason therefor. The claimant will also be advised upon completion of adjudicative action based upon the decision, of the provisions thereof, and his entitlement, or non-entitlement thereunder and of his right of appeal, and of the time within which appeal must be taken. While failure to receive written notice of right to, and time for, appeal will not extend the time for filing appeal, it will not preclude an administrative review in a meritorious case upon a proper authorization. Claims which involve this provision will be forwarded with a summary of the facts and a recommendation by the adjudication officer or assistant adjudication officer, in field cases, to the director, claims service, branch office, or, in central office cases, by the chief or assistant chief of the division concerned to the director, veterans' claims service, or the director, dependents and beneficiaries claims service, depending upon the subject matter, for appropriate action. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.8 *Finality of decisions.* The decision of a duly constituted rating board, in a case properly before the board, will be final and binding upon all field offices of the Veterans' Administration and will not be subject to revision except by duly constituted appellate authorities or except as provided in § 3.9. (Sec. 9, 48 Stat. 10; 38 U. S. C. 709)

§ 3.9 *Revision of rating board decisions.* (a) No rating board will reverse or amend, except upon new and material evidence, a decision rendered by the same or any other rating board, or by any appellate authority, except where such reversal or amendment is clearly warranted by a change in law or by a specific change in interpretation thereof specifically provided for in a Veterans' Administration issue; *Provided,* That a rating board may reverse or amend a decision by the same or any other rating board where such reversal or amendment is obviously warranted by a clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered, but in each such case there shall be attached to each copy of the rating a signed statement by the rating board definitely fixing the responsibility for the erroneous decision. (See also § 3.101.) Where the severance of service connection is considered warranted on the facts of record, see paragraph (d) of this section.

(b) Whenever a rating board may be of the opinion that a revision or an amendment of a previous decision is warranted on the facts of record in the case at the time the decision in question was rendered, a difference of opinion being involved rather than a finding of clear and unmistakable error, the complete file will be forwarded to the director, claims service, branch office, accompanied by a complete and comprehensive statement of the facts in the case and a detailed explanation of the matters supporting the conclusions that a revision or amendment of the prior decision is in order. All cases in which difference of opinion on the same factual

basis involves a rating agency in central office, or exists between rating agencies in different branch office territories, will be submitted directly by the director, claims service, branch office, to the assistant administrator for claims, attention of the director, veterans' claims service. A rating decision will not be effected in any such case pending the return of the case file following branch or central office consideration. The effective date of the rating authorizing benefits in such cases will be the date of administrative determination, except where otherwise provided.

(c) Determinations in effect on March 19, 1933, will not be reversed in those cases comprehended within the provisions of sections 27 and 28, Public No. 141, 73d Congress, except as provided in these sections. These cases, therefore, will not be referred to the branch office, under paragraph (b) of this section upon a difference of opinion. In the event clear and unmistakable error is discovered the rating board will take action as provided in paragraph (a) of this section.

(d) Authority to sever service connection upon the basis of clear and unmistakable error (the burden of proof being upon the Government), even in those instances where veterans are pursuing courses of vocational rehabilitation training under Veterans' Regulation 1 (a), Part VII, as amended (38 U. S. C. ch. 12), is vested in regional offices and centers. Service connection will not be severed in any case on a change of diagnosis in the absence of the certification hereinafter provided. Accordingly, in reports of examinations submitted for rating purposes, where a change in diagnosis of a service-connected disability is made, the examining physician or physicians, or other proper medical authority, will be required to certify, in the light of all accumulated medical evidence, that the prior diagnosis on which service connection was predicated, was not correct. This certification will be accompanied by a summary of the facts, findings and reasons supporting the conclusion reached. When the examining physician or physicians, or other proper medical authority, are unable to make the certification provided herein, service connection will be continued by the rating agency. Where this certification is made, the case will be carefully considered by the rating agency and in the event it is determined in consideration of all the accumulated evidence that service connection should be continued, a decision to that effect will be rendered, citing this regulation as authority. If, in the light of all the accumulated evidence, it is determined that service connection may not be maintained, it will be severed. The claimant will be immediately notified in writing of the contemplated action and the detailed reasons therefor and will be given a reasonable period, not to exceed sixty days from the date on which such notice is mailed to his last address of record, for the presentation of additional evidence pertinent to the question. This procedure is for application except (1) in case of fraud; (2) in case of a change in law; (3) in case of a change of interpretation of law specifically provided in a Veterans' Administration issue; or (4) where the evidence establishes the service connection to be clearly illegal. (See Veterans' Administration adjudication procedures.)

(e) When the reduction of an award for a service-connected disability is considered warranted by a change in physical condition, the rating agency will prepare an appropriate rating extending the present evaluation sixty days from the date of rating, followed by the reduced evaluation. In all such cases award action and approval will be processed at the time of rating but the date of submission and approval entered on the award form will be the date following expiration of the sixty-day period following the date of rating. The reduction or discontinuance of the award shall become effective, in accordance with Veterans' Regulation No. 2 (a), Part I, paragraph III (b) (38 U. S. C. ch. 12), on the last day of the month in which the approval of the award is effective. In view of the time limitation the veteran will be promptly notified in writing at the time that such award action and approval are processed that the reduction or discontinuance will be effective as provided above, without further notice, if additional evidence is not submitted within the sixty-day period. If the veteran submits additional evidence within the sixty-day period, the rating and all award or approval action processed in accordance with the foregoing shall be reconsidered and confirmed, modified or canceled as required. The rating sheet will bear the following notation: "R. & P. R–1009 (E), as amended." (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.10 *Adjudication of applications.* Applications for disability compensation or pension will be adjudicated in the appropriate field station when the applicant's entire military or naval service was subsequent to July 15, 1903, or Coast Guard service subsequent to January 27, 1915, except when jurisdiction is otherwise vested in central office under § 3.1025. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.11 *Adjudication of applications of veterans residing without the continental limits of the United States.* Applications for disability compensation or pension received from veterans who reside outside the continental limits of the United States, with the exception of the Territory of Alaska, Hawaii, Puerto Rico, or the Republic of the Philippines will be adjudicated in the claims division, veterans claims service, central office. Accordingly, these applications will be forwarded to central office. This provision does not apply to transients inasmuch as residence beyond the continental limits of the United States must be satisfactorily established. However, such residence will be presumed if three consecutive monthly checks are received at the same address. (38 U. S. C. ch. 12, Reg. 10.) (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 3.12 *Adjudication of Applications of Employee-Claimants.* Applications for disability compensation or pension, presented by veterans in the employ of the Veterans' Administration will be adjudicated in the claims division, veterans claims service, central office. Accordingly, all such applications will be transferred by field offices to central office when an employee-claimant in either the classified or unclassified service or a member-employee has been continuously employed for ninety days provided that no adjudication is necessary during such period. If any adjudication is necessary in the case of an employee-claimant during the ninety-day period, such claim will be transferred to central office immediately. (See Veterans' Administration general procedures.)

§ 3.13 *Adjudication of applications of veterans residing in Washington, D. C.* Applications for disability compensation or pension, submitted by veterans residing in Washington, D. C., other than in the United States Soldiers Home, will be adjudicated in the regional office, Washington, D. C.

AERIAL TRANSPORTATION OF MAIL

§ 3.14 *Public No. 140, 73d Congress.* Compensation at the rates provided by Veterans' Regulation No. 1 (a), Part I (38 U. S. C. ch. 12), is payable to any officer (including warrant and reserve officers), or any enlisted man or his dependents where injury or death occurs while serving pursuant to the provisions of Public No. 140, 73d Congress. In the event of injury of any such officer or enlisted man the degree of disability resulting therefrom will be evaluated in accordance with the applicable Schedule for Rating Disabilities promulgated pursuant to Public No. 2, 73d Congress. The officer or enlisted man may elect to receive either the compensation under Veterans' Regulation No. 1 (a), Part I, or the benefits provided by section 5 of Public No. 140, 73d Congress. (48 Stat. 508).

DELEGATION OF AUTHORITY

§ 3.24 *Delegation of authority to certain employees.* (a) All adjudication officers, assistant adjudication officers, authorization officers, employees designated to act as authorization officers, attorney reviewers, employees designated to act as attorney reviewers, and claims reimbursement authorizers, are hereby delegated authority to make findings and decisions thereon under the applicable laws, regulations, precedents, and instructions, as to rights of claimants to benefits under all laws administered by the Veterans' Administration governing the payment of monetary benefits to veterans and their dependents.

(b) The chairman, central committee on waivers and forfeitures, alternate chairman, central committee on waivers and forfeitures, and chairmen and alternate chairmen, committee on waivers, are hereby delegated authority to take final action in the waiver of the recovery of payments from any person pursuant to the provisions of title 38, sections 33, 453, 507 (a), and 809, U. S. C., as amended,

subject to any limitations imposed by current regulations and instructions.

(c) The authority delegated by paragraphs (a) and (b) of this section, also the authority heretofore delegated to the designated employees individually, will terminate upon separation from service or change to a position not designated in paragraphs (a) and (b) of this section. Notice of termination of delegated authority as above provided will be sent immediately to the finance officer or payees accounts division, finance service, by the manager or responsible official in central office. Upon receipt of notice of termination of authority, the signature card provided for in § 3.25 will be removed from the file of authorized signature cards and dead-filed.

§ 3.25 *Verification of signatures of employees delegated authority under § 3.24 (a) and (b).* To insure proper certification of signature of employees delegated authority by § 3.24 (a) and (b), a 3 x 5 card containing the employee's actual signature and designation, dated, and certified by the proper official (signature cards for adjudication officers will be certified by the manager; authorization officers by the adjudication officer, etc.), will be prepared for each person delegated authority by § 3.24 (a) and (b). This card will be delivered to the finance officer or payees accounts division, finance service. A similar card will be certified to the finance officer for each adjudicator.

FILING OF CLAIMS AND SUPPORTING EVIDENCE

§ 3.26 *Application for benefits.* (a) A properly completed and executed VA Form 526, 526a, or 526b, upon receipt by the Veterans' Administration, constitutes an application for benefits indicated below and will be adjudicated under the applicable laws:

VA Form 526, Veteran's Application for Compensation for Disability Resulting From Service in the Active Military or Naval Forces of the United States.

VA Form 526a, Application for compensation Under Section 31, Public No. 141, 73d Congress, section 12, Public No. 866, 76th Congress, and section 2, Paragraph 4, Public Law 16, 78th Congress.

VA Form 526b, Veteran's Application for Pension for Disability Not the Result of Service in the Active Military or Naval Forces of the United States.

Under Executive Order 6017, February 7, 1933, appearing in title 22, page 161, Code of Federal Regulations of the United States of America, and section 1500, Public Law 346, 78th Congress, as amended, diplomatic and consular officers of the Department of State are authorized to act as agents of the Veterans' Administration, and therefore a formal claim filed in a foreign country will be considered as filed in the Veterans' Administration as of the date of receipt by the State Department representative.

(b) Applications for compensation, pension, or burial allowance, other than claims for pension under the general law, predicated on service prior to April 21, 1898, need not be sworn to but shall be acceptable on the claimant's own certification, shown to have been made with knowledge of the penalties provided by law for false or fraudulent claims, statements, etc.

§ 3.27 *Informal claims.* Any communication from or action by a claimant or his duly authorized representative, or some person acting as next friend of a claimant who is not sui juris, which clearly indicates an intent to apply for disability or death compensation or pension may be considered an informal claim. To constitute an informal claim, the communication must specifically refer to and identify the particular benefit sought. When an informal claim is received and a formal application is forwarded for execution by the claimant, such application shall be considered as evidence necessary to complete the initial application, and, unless a formal application is received within 1 year from the date it was transmitted for execution by the claimant, no award shall be made by virtue of such informal claim. If received within 1 year in such instances, it will be considered filed as of the date of receipt of the informal claim by the Veterans' Administration. However, a communication received from a service organization, pension attorney, or pension agent may not be accepted as an informal claim, if a power of attorney was not executed at the time the communication was written. In cases not covered by this rule, where the probability of an informal claim appears to be indicated but the facts are too obscure or complicated for determination, the file will be referred to the director, claims service, in branch office cases, or the director of the service concerned in central office cases, for decision upon the facts in the particular case. When benefits are being resumed under § 3.299 and an informal claim has been filed for a disability incurred or aggravated in the second period of service, the requirements of the third and fourth sentences of this paragraph are not for application. Under Executive Order 6017, February 7, 1933, appearing in title 22, page 161, Code of Federal Regulations of the United States of America, and section 1500, Public Law 346, 78th Congress, as amended, diplomatic and consular officers of the Department of State are authorized to act as agents of the Veterans' Administration, and therefore an informal claim filed in a foreign country will be considered as filed in the Veterans' Administration as of the date of receipt by the State Department representative.

§ 3.28 *Abandoned claims.* In an original claim or a claim for increase in which no response has been made within 1 year after the request for the evidence or order for physical examination by the Veterans' Administration, the claimant's failure or disregard will constitute abandonment of the claim and sufficient grounds for its rejection. After the expiration of 1 year, further action may not be taken unless a new application is received. Should the claim be finally established, pension or compensation shall commence from the date of filing the new application. (38 U. S. C. ch. 12, Reg. 2 (d).) (Sec. 9, 48 Stat. 10; 38 U. S. C. 709)

REQUIREMENTS FOR SUBMISSION OF EVIDENCE

§ 3.30 *Written and oral testimony to be under oath; administration of oaths by employees.* (a) All written testimony, whether lay or medical, submitted by or in behalf of a claimant in support of service-connection as proof that the claimant is entitled to such benefits will be submitted under oath. Claimants, their legal representatives, and witnesses in their behalf, appearing before any rating or appellate body for the purpose of presenting oral testimony, will be duly sworn.

(b) Employees detailed in accordance with section 300, Public No. 844, 74th Congress, may administer the oaths when their services are available without extra cost to the Government. (Sec. 300, 49 Stat. 2033; 38 U. S. C. 131)

§ 3.31 *Physicians' statements and lay affidavits.* (a) Statements are sometimes submitted to the Veterans' Administration which show that a physician has rendered professional care and treatment to a claimant but fail adequately to diagnose the disease or injury involved, the period and nature of the treatment rendered, or other facts necessary to enable the Veterans' Administration to determine whether the care and treatment is associated with the alleged service-incurred disease or injury. It would be unfair to the claimant arbitrarily to dismiss these statements as inconclusive without first undertaking to obtain from the physician or other person additional information, if possible. It is to the mutual interest of the claimant and of the Veterans' Administration to clarify any indefinite, inconclusive or incomplete statement through correspondence, and whenever necessary through personal contact, with the physician or other person submitting the statement.

(b) The adjudication personnel responsible for evaluating evidence will request amplification, clarification, or explanation of the evidence presented to them, if such action is considered necessary to an intelligent and equitable adjudication of the claim, but it is not intended that physicians' or laymen's statements will be routinely subjected to investigation.

(c) Full credence shall be given to the evidence submitted in proper form in support of claims for disability compensation, unless there is sound basis for doubt as to the conditions set forth in the physician's or layman's statement, by reason of other conflicting evidence or otherwise. A mere belief that a statement or affidavit is made from memory, without some sound basis therefor, is not sufficient ground for questioning its integrity. If conflicting evidence develops, the field office will reconcile the conflict by correspondence, and travel will not be resorted to for this purpose unless it is absolutely essential, and accurate and positive information cannot be obtained in any other manner.

(d) Where the veteran was engaged in combat with the enemy in active service with a military or naval organization of the United States during a war, campaign or expedition, satisfactory lay or other evidence of service incurrence or aggravation of a disease or injury will be accepted as sufficient proof establishing that fact if consistent with the circumstances, conditions, or hardships of such service, notwithstanding there is no official record of such incurrence or aggravation, *Provided,* That service connection is not rebutted by clear and convincing evidence. The benefit of every reasonable doubt will be resolved in favor of such veterans and the reasons for granting or denying service connection in each such case shall be recorded in full. (Public Law 361, 77th Cong. 55 Stat. 847; 38 U. S. C. 726) See § 3.77 (b).

§ 3.32 *Evidence required from a foreign country and release of original documents from files of the Veterans' Administration for authentication.* (a) (1) Except as provided in subparagraphs (2) and (3) of this paragraph, where an affidavit or document is executed by or before an official in a foreign country, the signature of that official must be authenticated either (i) by a United States consular officer in that jurisdiction or (ii) by the Department of State. Affidavits or other documents emanating from foreign countries or jurisdictions where the United States has no consular representative may be authenticated in one of the following manners:

(i) By a consular agent of a friendly government. The signature and seal of the official of that country may be authenticated by a diplomatic or consular officer of a friendly government stationed in that country, whereupon the signature and seal of the official of the friendly government may be authenticated by the Department of State as provided below:

(ii) By the nearest American consul. The document may be forwarded to the nearest American consul who will attach a certificate showing the result of his investigation concerning its authenticity, and such certificate, if favorable, will be accepted by the Veterans' Administration.

(2) Authentication shall not be required:

(i) Oh documents submitted through and approved by the Deputy Minister of Veterans' Affairs, Department of Veterans' Affairs, Ottawa, Canada; or

(ii) When it is indicated that the attesting officer is authorized to administer oaths for general purposes and the paper bears his signature and seal; or

(iii) When the document is executed before a Veterans' Administration employee authorized to administer oaths as provided by § 3.30 (b) located in a foreign country; or

(iv) When a copy of a public or church record from any foreign country purports to establish birth, marriage, divorce or death: *Provided,* It bears the signature and seal of the custodian of such record and there is no other evidence in the file which would serve to create doubt as to the correctness of the information shown on the record; or

(v) When a copy of a public or church record from one of the countries comprising the United Kingdom, namely: England, Scotland, Wales or Northern Ireland, purports to establish birth, marriage or death, provided it bears the signature or seal or stamp of the custodian of such record and there is no other evidence in the file which would serve to create doubt as to the correctness of the information shown on the record.

(3) The authenticity of notarizations of affidavits prepared in the Republic of the Philippines may be certified by a Veterans' Administration representative of the regional office or a Veterans' Administration office located in the Philippines who is authorized to administer oaths as provided by § 3.30 (b).

(b) When documents received require authentication, they will be forwarded to the Department of State through the head of the activity concerned in central office, and subsequently through the office of foreign relations service, for the purpose of authentication. The Department of State will be informed that any expense which may accrue incident to the authentication must be borne by the claimant. The name and address of the person submitting the document and information as to the purpose for which it is to be used will be furnished. (In compliance with the recommendation of the State Department, the use of the word "visaed" in connection with papers submitted in proof of claims will be avoided as it is often misunderstood by the applicants in whose minds the word is associated with visas granted immigrants.)

When a document which requires authentication is transmitted to the Veterans' Administration by the embassy or legation of a foreign country it will be returned, if not properly authenticated, through the head of the activity concerned in central office, and subsequently through the office of foreign relations service, to such embassy or legation for authentication and for submittal through the Department of State for further authentication. Documents emanating from China and Japan will not be returned direct to the embassies of these countries for authentication. The documents will be forwarded to the Department of State, through the office of foreign relations service, with a request for proper authentication by that Department.

(c) Where it is indicated that evidence from a foreign country to establish relationship, age or death would not be accessible to the claimant and evidence of record tends to establish the facts in issue, the case file, together with a complete statement of facts, will be submitted to the director of claims in a branch office, or the director, veterans claims service, or director, dependents and beneficiaries claims service, in central office, whichever is appropriate, with a recommendation that a finding of relationship, age, or death be made.

§ 3.33 *Value of service records for evidence of discharge.* For the purpose of securing authoritative information in regard to discharge, with the view to making pension or compensation payments, if merited, the possession by the Veterans' Administration of any one of the following documents will furnish proof of such discharge and will be accepted by the Veterans' Administration at face value as credible evidence. An actual certificate of discharge; an authoritative notice from the Adjutant General's Office or from the Navy Department as to the facts of such discharge; or lastly, any copy or abstract of the certificate of discharge which has been certified by a notary public or any other person who has the authority under law to administer oaths. In any case in which such evidence or a photostat of the certificate of discharge is received, it will be accepted as authoritative proof of the data shown therein, for the purpose of making awards of disability or death benefits. These data need not be verified where they alone are sufficient to determine entitlement to disability or death compensation or pension benefits, unless there is some reason to question the genuineness of the document or accuracy of the information contained therein. This does not preclude the securing of additional information which may not be disclosed on the certificate of discharge or copy.

PROOF OF RELATIONSHIP AND DEPENDENCY

§ 3.40 *Definitions as to relationship.* Definitions as to relationship used in the World War Veterans' Act, 1924, as amended, are applicable under sections 26, 27, and 28 of Public No. 141, 73d Congress. On or after July 13, 1943, the date of enactment of Public Law 144, 78th Congress, the definitions of parent, father, mother, and child for the purposes of Public No. 141, 73d Congress, as amended by Public Law 144, 78th Congress, are those given in §§ 3.41 and 3.42. (Sec. 3, 43 Stat. 607, secs. 7, 8, 57 Stat. 555–556; 38 U. S. C. 424, ch. 12 note)

§ 3.41 *Definition of mother or father under Public No. 2, 73d Congress, Public No. 141, 73d Congress, Public No. 484, 73d Congress, Public No. 269, 74th Congress, Public Law 16, 78th Congress, as amended, and Public Law 346, 78th Congress.* (a) These terms mean a natural mother or father of a veteran, or mother or father of a veteran through legal adoption. The phrase "natural mother" means the biological female parent, whether the veteran was legitimate or illegitimate. In establishing relationship where the dependency of a mother is for consideration the submission of evidence of birth will suffice, as evidence of the mother's marriage in establishing relationship under these circumstances would serve no useful purpose. Where the dependency of a father, as defined in paragraph VII of Veterans' Regulation No. 10 (38 U. S. C. ch. 12) is involved, evidence establishing the parentage, through marriage or otherwise, will be required. On or after July 13, 1943, for

the purposes of Public No. 2, 73d Congress, and Public No. 141, 73d Congress, as amended by Public Law 144, 78th Congress, the terms "parent," "father," and "mother" include a father, mother, father through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year (not including stepparent, unless such stepparent stood in loco parentis): *Provided*, that not more than one father and one mother, as defined, shall be recognized in any case, and preference shall be given to such father or mother who actually exercised parental relationship at the time of or most nearly prior to the date of entry into active service by the person who served. (Section 1, Public Law 144, 78th Congress, and section 1500, Public Law 346, 78th Congress.)

(b) The father of an illegitimate child will be considered to be within the meaning of the word "father" as used in the War Risk Insurance Act, or the World War Veterans' Act, 1924, as amended, upon proof of the existence of the family relationship usual between parent and child at the time the latter entered the service. (Sec. 3, 48 Stat. 1281, 49 Stat. 614, sec. 8, 57 Stat. 556; 38 U. S. C. 368, 505, ch. 12 note.)

§ 3.42 *Definition of child for purposes of Public No. 2, 73d Congress, Public No. 141, 73d Congress, Public No. 484, 73d Congress, Public No. 269, 74th Congress, Public Law 16, 78th Congress, as amended, and Public Law 346, 78th Congress.* The term "child" means a legitimate child or a child legally adopted, unmarried and under the age of eighteen years, unless prior to reaching the age of eighteen the child becomes or has become permanently incapable of self-support by reason of mental or physical defect. Apportioned compensation or pension may be continued under Public No. 2, 73d Congress, as amended by Public No. 78, 73d Congress, after the age of eighteen years but not after the age of twenty-one years on behalf of any child pursuing a course of instruction approved by the Administrator. On or after July 13, 1943, for the purposes of Public No. 2, 73d Congress, and Public No. 141, 73d Congress, as amended by Public Law 144, 78th Congress, the term "child" means a person unmarried and under the age of eighteen years, unless prior to reaching the age of eighteen years the child becomes or has become permanently incapable of self-support by reason of mental or physical defect, who is a legitimate child; a child legally adopted; a stepchild if a member of the man's household; an illegitimate child, but as to the father, only if acknowledged in writing, signed by him, or if he has been judicially ordered or decreed to contribute to the child's support or has been prior to his death judicially decreed to be the putative father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator of Veterans' Affairs to be the putative father of such child; as to the mother, proof of birth is all that is required: *Provided*, That the payment of pension shall be continued after the eighteenth birthday and until completion of education or training (but not after such child reaches the age of twenty-one years), to any child who is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute or university, particularly designated by him and approved by the Administrator, which shall have agreed to report to the Administrator the termination of attendance of such child, and if any such institution of learning fails to make such report promptly the approval shall be withdrawn. (Sec. 1, Public Law 144, 78th Cong., and sec. 1500, Public Law 346, 78th Cong.) Sec. 3, 48 Stat. 1281, 49 Stat. 614, sec. 1, 57 Stat. 554; 38 U. S. C. 368.)

§ 3.43 *Legitimacy of child.* The question of the legitimacy of a child is dependent upon the laws of the State involved.

§ 3.44 *Veteran's child adopted by another person.* A child of a veteran adopted out of the family of the veteran is, nevertheless, a "child" within the meaning of that term as defined in paragraph VI, Veterans' Regulation No. 10 (a) (38 U. S. C. ch. 12), except that no apportionment will be authorized other than in the additional amount specifically provided by the World War Veterans' Act, 1924, as re-enacted by Public No. 141, 73d Congress, to be paid on account of the child.

§ 3.45 *Evidence to establish relationship of child, for compensation, pension, and subsistence allowance purposes—*(a) *Legitimate child.* Where it is necessary to determine the legitimacy of a child, evidence will be required to establish the legality of the marriage of the mother of the child to the veteran or to show that the child is otherwise legitimated by State laws (see § 3.43), together with evidence of birth as outlined in § 3.46. Where the legitimacy of a child is not a factor, evidence to establish legitimacy will not be required, provided evidence is on file which meets the requirements of paragraph (b) sufficient to warrant recognition of the relationship of the child without regard to legitimacy.

(b) *Illegitimate child.* (1) As to the mother of an illegitimate child, proof of birth is all that is required. As to the father, proof of relationship of an illegitimate child shall consist of:

(i) An acknowledgment in writing signed by him;

(ii) Evidence that he has been judicially ordered or decreed to contribute to the child's support;

(iii) Evidence that he has been, prior to the date of death of the veteran, judicially decreed to be the putative father of the child; or

(iv) Other evidence satisfactory to the Administrator that the veteran is the putative father of the child, which may include but is not limited to:

(*a*) A certified copy of the public record of birth showing that the veteran was named as father of the child;

(b) Statements of persons who know that the veteran accepted the child as his; or

(c) Information obtained from public records, such as school or welfare agencies, which shows that the veteran was reputed to be the father of the child.

(2) The sufficiency of evidence will be determined in accordance with the facts in the individual case.

(3) Where none of the evidence outlined in subparagraphs (1) (i), (ii), or (iii) of this paragraph has been submitted, and evidence is on file which is considered adequate to establish the reputed paternity of an illegitimate child as contemplated by subparagraph (1) (iv) of this paragraph, a brief summary of the facts, including a description of the supporting evidence and a recommendation that a finding of fact of relationship be made, will be submitted for the approval of the appropriate official, as follows:

(i) In regional office cases, the adjudication officer or the chief, vocational rehabilitation and education division;

(ii) In branch office cases, the director, claims service;

(iii) In central office cases, the chief, claims division, the chief, adjudicating division, or the director, registration and research service.

§ 3.46 *Evidence of birth.* Evidence of birth tending to establish age or relationship for the purpose of payment of any benefits under any law administered by the Veterans' Administration should consist of one of the following types of evidence in the following order of preference: *Provided*, that if the name of the person appearing on the copy of a record is not the same as that appearing on the records of the Veterans' Administration, an affidavit will be required identifying the person having the changed name as the person whose name appears in the record:

(a) A certified copy or abstract of the public record of birth or a certified copy of the church record of baptism, the certification to be made by the custodian of such records. A public birth record established more than four years after the birth shall be accepted as proof of age or relationship provided it is not inconsistent with material of record with the Veterans' Administration, or if it shows on its face that it is based upon evidence which would itself be acceptable under any of the other paragraphs of this section. A record of baptism performed more than four years after birth shall not be accepted as proof of age or relationship unless it is consistent with material of record with the Veterans' Administration, which shall include at least one reference to age or relationship made at a time when such reference was not essential to establishing title to the benefit being claimed.

(b) Official report from service department as to birth which occurred while the veteran was in service.

(c) Affidavit of the physician or midwife in attendance at birth.

(d) Copy of Bible or other family record certified to by a notary public or

other officer with authority to administer oaths for general purposes, who should state in what year the Bible or other book in which the record appears was printed, whether the record bears any erasures or other marks of alteration, and whether from the appearance of the writing he believes the entries to have been made recently or at the time reputed.

(e) Affdavits of two or more persons, preferably disinterested, who shall state their ages, showing the name, date and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents (naming the parents), and stating the source of their knowledge.

(f) Other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration or naturalization records.

§ 3.47 *Claims based on attained age.* (a) (1) In claims for pension where the age of the veteran is material and his statements of age agree with that shown at enlistment by official records, such statements may be accepted. If his statements do not agree with the service department report, the youngest age will be accepted, subject to the submission of acceptable evidence as outlined in § 3.46.

(2) In claims for pension where the age of a widow of a veteran is material (i. e., where the claim is predicated upon service rendered prior to July 16, 1903), her statements of her age will be accepted provided such statements agree with those shown on documents executed by her and filed in the Veterans' Administration prior to the time her age became a factor in determining her entitlement to pension or the rate of her pension. If her statements of age do not agree with those shown on such documents the youngest age will be accepted. In the absence of statements as described or in the event the statements do not agree with information shown on documents of record, proof of the date of birth as outlined in § 3.46 will be required.

(b) Where it is necessary to disallow an original claim due to lack of attainment of the minimum age, the claimant should be notified of his right to file a supplemental claim after reaching a pensionable age.

§ 3.48 *Secondary evidence of birth or marriage.* The classes of evidence to be requested for the purpose of establishing age or relationship or marriage are indicated in §§ 3.46 and 3.50 in the order of preference. Failure to furnish the higher class, however, does not preclude the acceptance of a lower class if the evidence furnished is sufficient to prove the point involved. Photostats of original documents or of certified copies of records may be accepted if the original would be acceptable.

§ 3.49 *Validity of marriage.* (a) All marriages shall be proved as valid according to the law of the place where the parties resided at the time of marriage, or at the time and place where the parties resided when rights to compensation or pension accrued.

(b) Jurisdiction to determine the legality of marriage for pension or compensation purposes, in questionable cases, is conferred on the Administrator of Veterans' Affairs. A marriage may not be recognized as valid until it is shown that prior marriages have been dissolved. The burden of proof as to any fact essential to establish entitlement to compensation or pension, by reason of marital status, is on the claimant.

§ 3.50 *Proof of marriage.* Marriage should be established by one of the following types of evidence in the following order of preference:

(a) Copy of the public record of marriage, duly certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or one duly authorized to act for him, bearing the seal of such office, or otherwise properly identified, or a certified copy of the church record of marriage.

(b) Official report from service department as to marriage which occurred while the veteran was in service.

(c) The affidavit of the clergyman or magistrate who officiated.

(d) By the production of the original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage.

(e) By the affidavits of two or more eye witnesses to the ceremony.

(f) In jurisdictions where marriages other than by ceremony are recognized, the affidavits of one or both of the parties to the marriage, if living, supplemented by the affidavits of two or more witnesses who know that the parties lived together as husband and wife and were so recognized and who shall state how long in their knowledge such relation continued, and such other evidence as may be required by the laws of the particular State to establish a valid informal or common-law marriage.

(g) The termination of all prior marriages of each party is to be shown by duly certified copies of final decrees of divorce or annulment, or by proof of death as provided in § 3.55.

(h) For the purpose of discontinuing compensation or pension payments to a widow or remarried widow, and determining the entitlement of children of the veteran, a statement by the widow or remarried widow setting forth the date of remarriage and her present name shall be accepted; *Provided,* That where there is reason to believe that the remarriage may have occurred at an earlier date, formal proof of the remarriage as outlined in the preceding paragraphs shall be required.

§ 3.51 *Effect of divorce decree granted outside the marital domicile.* Divorce decrees, regular on their face, granted either within the matrimonal domicile or outside thereof, not protested by either party after notice, will be accepted for compensation or pension purposes in determining marital status. In any case wherein a divorce decree, granted outside of the matrimonial domicile is presented for the purpose of changing compensation or pension payments, against the protest of one party to the marriage resident within the matrimonial domicile, if it be indicated from the record that the party to whom the decree was granted was not a bona fide resident of the State wherein the decree was granted, the decree will not be accepted as effecting a change in the marital status of the parties for the purpose of compensation or pension benefits without evidence being submitted satisfactory to the Veterans' Administration showing the bona fide domicile of the plaintiff to the divorce action within the jurisdiction of the court granting the decree. In any case wherein the decree is unquestioned and no reason appears for the further inquiry, or where any question as to the effectiveness of the decree is raised, and the Veterans' Administration is satisfied that plaintiff was domiciled within the jurisdiction of the court, a divorce decree will be accepted as changing the marital status notwithstanding the fact that one of the parties to the decree was not a resident of the State wherein the decree was granted and notwithstanding the fact that the State wherein he or she resided would not, according to its own law, give effect to the decree as granted. See Veterans' Administration adjudication procedures.

§ 3.52 *Proof of annulment.* Where the marriage or remarriage of a claimant who seeks benefits as an unmarried or unremarried person has been annulled, such person must submit as part of the evidence certified copies of:

(a) The petition to the court for annulment;

(b) The answer, if any;

(c) A transcript of the testimony, if available; and

(d) The court decree of annulment.

§ 3.55 *Proof of death.* Where a claim is filed on account of the death of a person, the proof of death shall be established as follows:

(a) By a copy of the public record of the State or community where death occurred, certified to by the custodian of such records; or by a duly certified copy of a coroner's report of death or a verdict of a coroner's jury of the State or community where death occurred, provided such report or verdict properly identified the deceased.

(b) Where death occurs in a hospital or institution under the control of the United States Government, by a death certificate signed by the medical officer in charge or by furnishing the evidence required under paragraph (a) of this section.

(c) Where death occurs while deceased was on the retired list, in an inactive duty status, or in the active service in the regular establishment of the United States Army, United States Navy,

United States Marine Corps, or United States Coast Guard, by an official report of death from the Department of the Army or Navy, or Treasury Department, or by furnishing the evidence required under paragraph (a) of this section.

(d) Where death occurs in a United States Army hospital or in a United States Naval hospital, while the deceased was on the retired list, in an inactive duty status, or in the active service under the United States Army, United States Navy, United States Marine Corps, or United States Coast Guard, by a death certificate signed by the medical officer in charge thereof or by furnishing the evidence required under paragraph (a) of this section.

(e) Where death occurs abroad, by a United States consular report of death, bearing the signature and official seal of the United States consul or by a certified copy of the public record of death authenticated by the United States consul or other agency of the State Department.

(f) If the evidence called for in paragraphs (a) through (e) of this section cannot be obtained, the reason must be shown. If such reason is satisfactory, the fact of death may be established by the affidavit of persons who have personal knowledge thereof and have viewed the body of the deceased and know it to be the body of the person whose death is being established, setting forth all the facts and circumstances concerning the death, including the place, date, time, and cause thereof.

(g) In cases wherein proof of death, as defined in paragraphs (a) through (f) of this section, cannot be furnished, officials specifically authorized to do so by the Administrator of Veterans' Affairs may make a finding of fact of death where death is otherwise shown by competent evidence. The best evidence, which from the nature of the case must be supposed to exist, must be furnished in these cases.

§ 3.56 *Contact with other Government departments through central office.* Whenever procurement of information involves forwarding a request to another Government department, other than the service departments, State headquarters and draft boards of the Selective Service System of the various States, Railroad Retirement Board and Civil Service Commission, communication will be made through the proper activity in central office. No certification is required for copies of records requested from other Federal agencies. However, copies of official records submitted to the Veterans' Administration as evidence in connection with any claim and obtained from other than the above sources must be duly certified under the official seal of the custodian of the records.

§ 3.57 *Conditions which determine dependency.* (a) Dependency will be held to exist if the father or mother of the veteran does not have an income sufficient to provide reasonable maintenance for such father or mother and members of his or her family under legal age and for dependent adult members of the family if the dependency of such adult member results from mental or physical incapacity. "Reasonable maintenance" includes not only housing, food, clothing, and medical care sufficient to sustain life, but such items beyond the bare necessities, and as well as other requirements reasonably necessary to provide those conveniences and comforts of living suitable to and consistent with the parents' reasonable mode of life. "Members of the family" will be considered to mean those persons whom the father or mother is under moral or legal obligation to support.

(b) (1) In determining the amount of income, consideration will be given to (i) net income from property owned, or business operated, by the mother or father; (ii) earnings of the mother or father and other members of their family under legal age; (iii) actual contributions of any character to the family expenses by the adult members; (iv) so-called social security benefits, i. e., old age assistance and old age and survivors' insurance; (v) family allowances received pursuant to Public Law 625, 77th Congress, as amended by Public Law 174, 78th Congress.

(2) In determining whether other members of the family under legal age are factors in necessary expenses of the mother or father, consideration will be given to any income from business or property (including trusts) actually available, directly or indirectly, to the mother or father for the support of the minor but not to the corpus of the estate or the income of the minor which is not so available.

(3) In determining dependency, amounts received from the following named sources, by the father or mother or other member of the family, will be disregarded, viz., (i) as designated beneficiary or otherwise of any insurance under the War Risk Insurance Act, the World War Veterans' Act, 1924, as amended, or the National Service Life Insurance Act or any amendments to either; (ii) any pension or compensation under laws administered by the Veterans' Administration; (iii) benefits under the World War Adjusted Compensation Act or the Adjusted Compensation Payment Act, or any amendments to either; (iv) the 6 months pay made to the designated beneficiary thereof pursuant to 10 U. S. C. 903, 903 (a) and 456; 34 U. S. C. 943, 944 and 855c–2; (v) payments pursuant to Mustering-Out Payment Act, 1944, Public Law 225, 78th Congress; (vi) donations or assistance from charitable sources.

(4) In addition to considering income of a father or mother, consideration will be given to the corpus of such claimant's estate if under all the circumstances it is reasonable that the same or some part thereof be sold and the proceeds consumed for the claimant's maintenance.

(c) The fact that the veteran has made habitual contributions to his father or mother, or both, is not conclusive evidence that dependency existed but shall be considered in connection with all other evidence.

(d) The remarriage of a mother or father does not, per se, bar entitlement but is prima facie evidence that dependency has ceased.

(e) (1) In the absence of evidence indicating the contrary, dependency will be held to exist when the monthly income from sources proper to consider does not exceed:

(i) $80 for a mother or father (not living together).

(ii) $135 for a mother and father (living together).

(iii) The amounts stated in subdivision (i) or (ii) of this subparagraph plus $35 for each additional member of the family whose support is to be considered under the criteria indicated in paragraphs (a) and (b) of this section.

It must be definitely understood that the amounts stated are not controlling in any case but are to be used only as prima facie evidence. Each claim is subject to adjudication upon the facts thereof in the light of the governing legal principles summarized in this section. The above monetary guides are not for application in a foreign country. (55 Stat. 665; 38 U. S. C. 357b, 472b)

DETERMINATIONS AS TO BASIC ENTITLEMENT

§ 3.59 *Active service under Public No. 2, 73d Congress.* (a) In determining rights pursuant to Veterans' Regulation No. 1 (a), (38 U. S. C. ch. 12), active service shall be accepted as exclusive of unauthorized leave of absence which materially interferes with the performance of military duties or of periods of agricultural, industrial, or indefinite furlough. The definition of "active service" shall be subject to the provisions of paragraphs VIII and IX, Veterans' Regulation No. 10, as amended by Public No. 648, 75th Congress, and Public Law 439, 78th Congress, as they relate to "misconduct" and the definition of "line of duty." (38 U. S. C. ch. 12, Reg. 1 series).

(b) Service for 90 days or more, required by Part I, paragraph 1 (c), and service for 6 months or more, required by Part II, paragraph I (b), Veterans' Regulation No. 1 (a), will mean continuous, active service, as defined in paragraph (a) of this section, during one or more enlistment periods. For the purpose of Part I, Veterans' Regulation No. 1 (a), such active service must have been during an enlistment or enlistments shown to have begun prior to the termination of a service period specified by Part I, Veteran's Regulation No. 1 (a). The service requirements in claims for pension for disabilities not the result of service are defined in Part III, paragraph 1 (d), of Veterans' Regulation No. 1 (a), and paragraph 3, Veterans' Regulation No. 1 (c), as modified by Public No. 344, 74th Congress. A veteran in active service on April 6, 1917, who was discharged therefrom without serving 90 days during the World War as defined by existing regulations, will be given, if otherwise in order, the benefit of the provisions of paragraph 1 (c), Part I, Veterans' Regulation No. 1 (a), if he had 90 days continuous service.

§ 3.60 *Active service requirements of Veterans' Regulation No. 1 (a), Part III, (38 U. S. C. ch. 12).* Where the military service extended into or beyond the period of hostilities, there must be 90 days continuous service so extending in order to meet the requirements of Part III, Veterans' Regulation No. 1 (a), as amended, but the requirements of active service for a total of 90 days or more during one of the enumerated wars can be composed of two or more periods of service, if all such periods are within the war period. Service is exclusive of the furloughs enumerated in § 3.59, time under arrest, in the absence of acquittal, time for which the soldier or sailor was determined to have forfeited pay by reason of absence without leave, and time spent in desertion or while undergoing sentence of court martial. Time in a hospital, on sick furlough, or as a prisoner by the enemy is included. (52 Stat. 754; 38 U. S. C. ch. 12 note)

§ 3.61 *Validity of enlistment a prerequisite to enlistment*—(a) *In desertion at time of enlistment.* A veteran in desertion who re-enlisted and served honorably is not barred from pension, if otherwise entitled by reason of his honorable service, unless the re-enlistment was affirmatively voided by the Service Department.

(b) *Misrepresentation of age.* Title 10, U. S. C. A., in paragraphs 654 and 654a, provides that a person who enlisted in the Army between April 6, 1917, and November 11, 1918, and was discharged for fraudulent enlistment on account of misrepresentation of age shall be considered to have been honorably discharged. The same provisions are extended by title 34, U. S. C. A., paragraph 204, to a person who enlisted in the Navy or Marine Corps between April 6, 1917, and November 11, 1918. Public No. 467, 74th Congress (March 3, 1936), provides that in the administration of any laws conferring rights, privileges, or benefits upon honorably discharged soldiers of the United States Army, their widows and dependent children, a soldier who served as an enlisted man between April 6, 1917, and November 11, 1918, both dates inclusive, and who was discharged for fraudulent enlistment on account of minority or misrepresentation of age shall hereafter be held and considered to have been discharged honorably from the military service on the date of his actual separation therefrom if his service otherwise was such as would have entitled him to an honorable discharge. These provisions of Public No. 467, 74th Congress, are extended by Public No. 412, 76th Congress (February 9, 1940), to discharged sailors of the United States Navy and discharged marines of the United States Marine Corps, their widows and dependent children. Paragraph 655, as amended by Public No. 108, 75th Congress, provides that a person who enlisted in the Army between April 21, 1898, and July 4, 1902, both dates inclusive, and who was discharged for fraudulent enlistment on account of minority or misrepresentation of age shall hereafter be held and considered to have been discharged honorably from the military service on the date of his actual separation therefrom, if his service otherwise was such as would have entitled him to an honorable discharge. If the discharge was for fradulent enlistment on account of misrepresentation of age by the veteran's statement alone, benefits may be awarded from January 5, 1927, if otherwise entitled; but where the individual was discharged because of fraudulent enlistment on account of minority, benefits, if otherwise in order, are payable from May 25, 1937. The determination whether the veteran should be considered to have been honorably discharged under the several provisions of this section will be made by the appropriate service department, and such determination will be binding on the Veterans' Administration. (49 Stat. 1159, 54 Stat. 21; 10 U. S. C. 654b; 34 U. S. C. 405, 697)

§ 3.63 *Service-connection, sound condition at the time of entrance into service, aggravation and natural progress under Public No. 2, 73d Congress, as* amended, *Veterans Regulation 1 (a), Part I and Part II (38 U. S. C. ch. 12).* (a) Service-connection connotes many factors. In general and fundamentally it means establishment of the incurrence of injury or disease or aggravation of a pre-existing injury or disease resulting in disability coincidentally with the period of active military or naval service. This may be accomplished by the presentation of affirmative facts showing the inception or aggravation of an injury or disease during active service or through the operation of statutory or regulatory presumptions. Determinations as to service-connection, in general, should be based on review of the entire evidence of record in the individual case with due consideration extended to the defined and consistently applied policy of the Veterans' Administration to administer the law under a broad and liberal interpretation consistent with the facts shown in each case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service-connection, such doubt will be resolved in favor of the veteran. Particular consideration should be accorded combat duty and other hardships of service.

(b) For the purposes of paragraph 1 (a), Part I, Veterans' Regulation No. 1 (a), as amended July 13, 1943 (38 U. S. C. ch. 12), every person employed in active service shall be taken to have been in sound condition when examined, accepted and enrolled for service except as to defects, infirmities or disorders noted at the time of the examination, acceptance and enrollment or where clear and unmistakable evidence demonstrates that the injury or disease existed prior to acceptance and enrollment and was not aggravated by such service. Relative to notation at enlistment, only those defects, infirmities and disorders recorded at the time of examination are to be considered as noted. History of the preservice existence of defects, infirmities or disorders recorded at the time of examination for acceptance and enrollment does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to the inception of such defects, infirmities or disorders.

(c) Ninety days or more service is not necessary under paragraph 1 (b), Part I, Veterans Regulation No. 1 (a), as amended July 13, 1943 (38 U. S. C. ch. 12), and the provisions thereof are applicable to all war service as defined in paragraph 1 (a), as amended.

(d) "Clear and unmistakable" means obvious or manifest. Accordingly, evidence which makes it obvious or manifest, that the injury or disease under consideration existed prior to acceptance and enrollment for service will satisfy the requirements of the statute. The requirement of the law is that claims to which the above-cited presumptions apply be denied only on the basis of evidence which clearly and unmistakably demonstrates that the disease did not originate in service, or, if increased in service, was not aggravated thereby.

(e) Determinations concerning the inception of injury or disease not noted at enlistment under paragraph 1 (b), Part I, Veterans' Regulation No. 1 (a), as amended July 13, 1943 (38 U. S. C. ch. 12), should not be based on medical judgment alone as distinguished from accepted medical principles or on history alone without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. Adjudicative action under this regulation should be based on a thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts with due regard to accepted medical principles pertaining to the history, manifestations, clinical course and character of such injury or disease. History conforming to accepted medical principles pertaining to such injury or disease should be given due consideration in conjunction with basic clinical data concerning the manifestation, development and nature of such injury or disease, and accorded probative value consistent with accepted medical and evidentiary principles in relation to other competent evidence in each case. All material evidence relating to the incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of such injury or disease, should be taken into full account subject to the limitations contained in section 105, Public Law 346, 78th Congress.

(f) There are certain medical principles so well and universally recognized as definitely to constitute fact, and when in accordance with these principles existence prior to entrance into service is established, no further additional or confirmatory facts are necessary. For example, with notation or discovery, during service, of residual conditions, such as scars, healed fractures, absent or resected parts of organs, supernumerary parts, congenital malformations, fibrosis evidencing formerly active tuberculosis, with no evidence of the pertinent antecedent active injury or disease during service, the established facts are so convincing as to impel the conclusion that the residual condition existed prior to entrance into active service, without further proof of this fact. Similarly, mani-

festation of lesions or symptoms of chronic disease from date of enlistment, or so close to that date that the disease could not have originated in so short a period, will be accepted as clear and unmistakable proof that the disease existed prior to entrance into active service. Likewise, manifestation of disease within less than the minimum incubation period after enlistment will be accepted as showing inception prior to service.

(g) The application of the foregoing instructions carrying into effect the principles and intent of section 9 (b), Public Law 144, 78th Congress, will be in full accord with the principles involving clear and unmistakable evidence and burden of proof enunciated in Public No. 141, 73d Congress.

(h) The development of evidence in connection with claims heretofore or hereafter adjudicated under the provisions of section 9 (a) and (b), Public Law 144, 78th Congress, will be accomplished when deemed necessary. Development should not be undertaken when the evidence present is sufficient for a proper determination of the question of service connection. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished without awaiting copy of the examination at enlistment.

(i) Under Regulation 1 (a), Part I, paragraphs 1 (a), (b), and (d), as amended July 13, 1943, (38 U. S. C. ch. 12), injury or disease, apart from misconduct disease, noted prior to service or shown by clear and unmistakable evidence, including medical facts and principles, to have had inception prior to enlistment will be conceded to have been aggravated where such disability underwent an increase in severity during service unless such increase in severity is shown by clear and unmistakable evidence, including medical facts and principles, to have been due to the natural progress of the disease. Aggravation of a disability noted prior to service or shown by clear and unmistakable evidence, including medical facts and principles, to have had inception prior to enlistment may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of such disability prior to, during and subsequent to service. (Subject to the limitations of sec. 105, Pub. Law 346, 78th Cong., as amended.) Sudden pathological developments involving pre-existing diseases such as hemoptysis, spontaneous pneumothorax perforation of gastro-duodenal ulcer, coronary occlusion or thrombosis, cardiac decompensation, cerebral hemorrhage, and active recurrent rheumatic fever occurring in service establish aggravation unless it is shown by clear and unmistakable evidence that there was no increase in severity during service. Recurrences, acute episodes, symptomatic fluctuations, descriptive variations and diagnostic evaluations of a preservice injury or disease during service or at the time of discharge are not to be construed as establishing increase of disability in the absence of sudden pathological development or advancement of the basic chronic pathology during active service such as to establish increase of pre-existing disability during service. The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including post-operative scars, absent or poorly functioning parts or organs, will not be considered service-connected unless the disease or injury is service-connected, i. e., aggravated by service otherwise than by the usual effects of treatment. In many cases a blind eye has been enucleated during service either for improvement of the veteran's general appearance or to prevent the spread of infection to the other eye. It will be borne in mind that the degree of disability resulting from enucleations may be no greater than that due to undeveloped, atrophied, scarred or discolored eyes and eyes affected by active pathology at the time of enlistment. In such cases, keeping in mind section 9 (b), Public Law 144, 78th Congress, service connection for the condition causing the enucleation is not in order unless the eye condition was aggravated by service. Unless in such cases service connection or aggravation for the eye condition is established, there can be no entitlement to the special monthly compensation for the loss of the eye. The mere fact of enucleation will not establish aggravation. Service connection will depend on whether the cause of enucleation is considered as service-incurred or aggravated. In determining aggravation by service due regard will be given the places, types and circumstances of the veteran's service and particular consideration will be accorded combat duty and other hardships of his service. The development of symptomatic manifestations of a pre-existing injury or disease during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation.

(j) Determinations involving the consideration of sound condition at time of entrance into service, for the purposes of Part II, paragraph 1 (b) of Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), will be based upon the evidence of record and such evidence as may be secured in any case where for any reason additional evidence may be considered to be necessary for the purpose of such determinations. Evidence of the existence of a condition at the time of or prior to entrance into service shall mean any evidence which is of record and which is of a nature usually accepted as competent to indicate the time of existence or inception of disease or injury. In the exercise of medical judgment for the purpose of such determinations, rating agencies shall take cognizance also of the time of inception or manifestation of disease or injuries after the date of entrance into service, as disclosed by service records, and shall consider other entries or reports of proper military and naval authorities as they may relate to the existence of a condition at the time of or prior to enlistment or enrollment. Such records shall be accorded the weight to which they are entitled in consideration of other evidence and sound medical reasoning. The opinion of qualified physicians of the Veterans' Administration may be solicited whenever it is considered to be necessary or appropriate in any case.

(k) For the purposes of Part II, Veterans' Regulation No. 1 (a), paragraph 1 (a), (38 U. S. C. ch. 12), a pre-existing injury or disease will be considered to have been aggravated by active military or naval service where there is an increase in disability during active service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. A specific finding that the increase in disability is due to the natural progress of a disease will be met, for the purposes of Part II, paragraph 1 (a), of Regulation 1 (a), by a finding of a constituted rating agency of the Veterans' Administration based upon available evidence of a nature generally acceptable as competent to show that an increase in severity of a disease or injury, or of the disabling effects thereof, or acceleration in progress of a disease was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. (Sec. 1, 48 Stat. 8, sec. 9, 57 Stat. 556; 38 U. S. C. 701, ch. 12 note)

§ 3.64 *Character of discharge under Public No. 2, 73d Congress, as amended, and under Public Law 346, 78th Congress.* (a) To be entitled to compensation or pension under Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12), the period of active service upon which claim is based must have been terminated by discharge or release under conditions other than dishonorable. In other words benefits under Public No. 2, 73d Congress, and Public Law 346, 78th Congress, are barred where the person was discharged under dishonorable conditions. The requirement of the words "dishonorable conditions" will be deemed to have been met when it is shown that the discharge or separation from active military or naval service was (1) for mutiny, (2) spying, or (3) for an offense involving moral turpitude or wilful and persistent misconduct: *Provided, however,* That where service was otherwise honest, faithful and meritorious a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions.

(b) In addition to the question of the character of the discharge there should also be borne in mind the provisions of section 300 of Public Law 346, 78th Congress, under which benefits under any laws administered by the Veterans' Administration are barred, as to the particular period of service, where a person is discharged or dismissed by reason of the sentence of a general court-martial, or is discharged on the ground that he was a conscientious objector who refused to perform military duties or refused to

wear the uniform or otherwise to comply with lawful orders of competent military authorities, or as a deserter, or in the case of an officer where his resignation is accepted for the good of the service. However, in the case of any such person, if it be established to the satisfaction of the Administrator that at the time of the commission of the offense such person was insane, he shall not be precluded from benefits to which he is otherwise entitled under the laws administered by the Veterans' Administration. However, veterans in receipt of pension or compensation on the date of the enactment of Public Law 346, 78th Congress, pursuant to the interpretation of prior laws, are not affected by the requirements of either section 300 or section 1503, Public Law 346, 78th Congress.

(c) The acceptance of an undesirable or blue discharge to escape trial by general court-martial will, by the terms of section 1503, Public Law 346, 78th Congress, be a bar to benefits under Public No. 2, 73d Congress, as amended, and Public Law 346, 78th Congress, as it will be considered the discharge was under dishonorable conditions.

(d) An undesirable or blue discharge issued because of homosexual acts or tendencies generally will be considered as under dishonorable conditions and a bar to entitlement under Public No. 2, 73d Congress, as amended, and Public Law 346, 78th Congress, as amended. However, the facts in a particular case may warrant a different conclusion, in which event the case should be submitted to the director, claims service, branch office, for attention and consideration. (As to the effect of alienage see § 3.1 (j).) (Sec. 1503, 58 Stat. 301; 38 U. S. C. 697c)

§ 3.65 *Wilful misconduct.* (a) A disabling condition will be considered to be the result of wilful misconduct for the purpose of all adjudications under Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12), and sections 27 and 28, Public No. 141, 73d Congress, as amended, when it is shown to have been incurred under conditions or in a manner set forth by Veterans' Regulation No. 10, paragraph VIII, as amended by Public Law 439, 78th Congress, without regard to any prior determinations respecting the manner of its incurrence. A finding in any case that a disabling condition is of wilful misconduct nature, as defined by Veterans' Regulation No. 10, paragraph VIII, as amended by Public Law 439, 78th Congress, will bar any right to pension or compensation under Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12), and sections 27 and 28, Public No. 141, 73d Congress, as amended.

(b) (1) Pension shall not be payable under Part III, Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12), for any disability due to the claimant's own wilful misconduct or vicious habits. In the construction of the term "vicious habits" the words "vicious" and "habits" must be taken together and so taken, a corrupt or immoral act is not a vicious habit if it is not repeated to such an extent as to become a regular and fixed mode of action; a single incident, however vicious, is not a vicious habit.

(2) For the purpose of adjudications under section 31, Title III, Public No. 141, 73d Congress, section 12, Public No. 866, 76th Congress, and Veterans' Regulation No. 1 (a), Part VII, paragraph 4, Public No. 2, 73d Congress, as amended, the definition established by precedents under section 213, World War Veterans' Act, 1924, as amended, for wilful misconduct will be applied.

(c) In determining whether an act is due to wilful misconduct the precedents under the World War Veterans' Act, 1924, as amended, are for application except as to venereal diseases meeting the requirements of section 2, Public Law 439, 78th Congress. Generally, these precedents are to the effect that an act to be one of "wilful misconduct" must be "malum in se" or "malum prohibitum" if involving conscious wrongdoing or known prohibited action. (Mere technical violation of police regulations or ordinances will not per se constitute "wilful misconduct" but are factors for consideration in the light of the attendant circumstances.)

(d) Venereal diseases not meeting the requirements of section 2, Public Law 439, 78th Congress, that is, not incurred in service or if incurred in service where there was failure to report and receive treatment will be held to be due to wilful misconduct unless affirmatively shown to have been innocently acquired. Venereal diseases meeting the requirements of section 2, Public Law 439, 78th Congress, will not be deemed due to wilful misconduct. For compliance with the cited provision of law, there are three requirements, all of which must be met, for a finding of service incurrence in line of duty and rebuttal of the presumption of wilful misconduct in venereal disease cases not shown to have been innocently acquired during service; (1) the initial infection must have been incurred in active service, as provided in § 3.50 (a); (2) the person must have reported promptly to proper authority the earliest manifestation of the venereal disease; and (3) the person must have submitted to the treatment prescribed and continued such treatment until the approved conclusion thereof. An affirmative determination as to each of the three foregoing requirements of law will be necessary for findings of service incurrence in line of duty and rebuttal of the presumption of wilful misconduct. If any one of the three requirements is not met, a finding of service incurrence in line of duty and rebuttal of the presumption of wilful misconduct may not be made for the purpose of Public Law 439, 78th Congress. Where the reports furnished by the service department, together with all other evidence of record, considered in accordance with accepted medical principles, are adequate for adjudication in conformity with the foregoing, it will not be necessary to secure additional information from the service department. If the available service record is found incomplete and insufficient for adjudicative action, additional information may be requested from the service department on Form 3101 series. Where found indicated the syphilitic register or a photostatic copy should be obtained. Where found indicated, inquiry should be made of the service department as to whether or not the serviceman was subjected to disciplinary action for failure to report the incurrence of venereal disease during service or to accept treatment therefor. Where there is a question as to time of incurrence of the venereal disease, that is, after entry into service or prior thereto, consideration will be accorded medical principles pertaining to the incubation period in relation to the initial or acute manifestations of the disease and the period and course of the clinical evolution of the secondary and late residuals manifested, as reflected by the facts of record in the individual case. Medical principles establishing that the disease was incurred prior to entry into service will meet the clear and unmistakable evidence requirements of section 9 (b), Public Law 144, 78th Congress. However, as to venereal diseases, attention is invited to the well-accepted and established medical principles which hold generally that increase in severity of manifestations of venereal disease is due to the natural progress thereof and it will be so determined (and such criteria constitutes clear and unmistakable evidence) except where the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event the increase in manifestations will be determined to be aggravation. (For conditions under which compensation is payable under the World War Veterans' Act, as amended, to World War I veterans for disability due to wilful misconduct see §§ 3.138 and 3.139.) (Sec. 4, 48 Stat. 9, 58 Stat. 752; 38 U. S. C. 704, ch. 12 note)

§ 3.66 *"Line of duty" under Veterans' Regulation No. 1 (a), Parts I and II, as amended (38 U. S. C. ch. 12).* (a) Veterans' Regulation No. 1 (a), as amended, Parts I and II, requires that a disabling condition for which compensation is claimed, shall have been incurred in line of duty except in cases where a right to compensation is preserved by Veterans' Regulation No. 4. The records of service departments will be accepted in determining line of duty status of diseases and injuries, unless considerations set forth in Veterans' Regulation No. 10, paragraph VIII, as amended by Public Law 439, 78th Congress, and the legal presumptions of the various laws, may warrant a different finding. Any evidence which is properly admissible or acceptable according to the practice of the Veterans' Administration, and which is of a nature competent to demonstrate that the incurrence of disability was or was not in line of duty, according to conditions specified in Veterans' Regulation No. 10, paragraph VIII, as amended by Public Law 439, 78th Congress, may be used as a basis for adjudications, despite any official military or naval record with respect to manner of incurrence. These determinations will be made by the officials of the Veterans' Administration charged with the responsibility of deciding claims for monetary or other benefits in the administration of laws in which line of duty is a factor. For the purpose of ascertaining line of duty status for periods of time prior to June 16, 1938,

continuous periods of leave will be considered as one extended leave in determining whether a leave of absence is of such duration as to interfere materially with the routine performance of duty. The provisions of Veterans' Regulation No. 10, paragraph VIII, as amended by Public Law 439, 78th Congress, will be observed carefully in effecting all adjudication where a question of incurrence of disease or injury in line of duty is pertinent; provided that on or after June 16, 1938, the date of approval of Public No. 648, 75th Congress, the fact that the injury was suffered or the disease was contracted while the person on whose account benefits are claimed was on authorized leave (irrespective of the duration of such leave) will not of itself bar a finding that the disability or death resulting therefrom was incurred in line of duty. In cases in which a determination is required as to whether disability was incurred while "avoiding duty by * * * absenting himself without leave materially interfering with the performance of military duties," consideration is to be given to the evidence, including the report of the Service Department, as to the fact and extent of interference with performance of duty. Generally, it is to be concluded that material interference does not result from brief absence for a period during which no specific duty assignment was made or would have been made if the person had not been absent without leave, unless a specific duty assignment was avoided by absence without leave.

(b) Whenever the veterans claims service, the dependents and beneficiaries claims service, or the insurance service has made a determination of the question of line of duty status for the purpose of compensation, pension or insurance, under the provisions of §§ 3.66 and 3.1046 such determination shall be binding upon any of these services for any of the purposes mentioned, unless it be clearly and unmistakably in error. This determination shall not be subject to question by reason of a difference of opinion, except as to whether such determination is clearly and unmistakably erroneous, in which case such question shall in field cases be referred to the deputy administrator, branch office, and in central office cases, to the executive assistant administrator, for his personal determination. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.67 *Disability of veteran (1) as a direct result of armed conflict, or (2) while engaged in extra hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war (Public Law 359, 77th Congress).* (a) For an injury or disease received in active service subsequent to March 4, 1861, in line of duty, (1) as a direct result of armed conflict, or (2) while engaged in extra hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war, the veteran shall be entitled to the wartime rates provided by 38 U. S. C. ch. 12, Reg. 1 (a) Part I.

(b) (1) "As a direct result of armed conflict" shall mean any situation in which a member or members of the military or naval forces incur death, injury or disease in line of duty as a direct result of the use of any instrumentality employed as a weapon in a war, offensive or defensive, expedition or occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla warfare, et cetera. The concept "armed conflict" relates to the actual use of firearms or other instrumentalities of war, e. g., submarines or military aircraft, by a belligerent nation or faction, with which the United States is not at war, under circumstances endangering the lives or safety of members of the United States forces. Thus, if a ship is torpedoed, or subjected to aerial attacks, by the action of a belligerent nation, with resultant death or disability affecting members of the United States forces, the death or disability is attributed to armed conflict. A person injured by instrumentalities of war under the control of any belligerent nation of faction, or subjected to exposure as a result of their operations, incurs any resultant disability as a result of armed conflict.

(2) Clearly, the application of the foregoing definition would include death, injury or disease incurred as the direct result of the bombing of the U. S. S. "Panay," the torpedoing of the U. S. S. "Kearney," and the sinking of the U. S. S. "Reuben James." Also included would be death, injury or disease incurred by personnel of the military or naval forces of the United States assigned for duty with the military or naval forces of another nation, such as observers, if the direct result of armed conflict. Similarly, within the meaning of the phrase would be an incident or event whereby death, disease or injury was incurred as the direct result of the hostile operations of a vessel or aircraft, friendly or not friendly to the United States. Death, injury or disease will be considered as resulting directly from armed conflict when the primary, contributory or proximate cause thereof results directly from armed conflict as defined herein.

(c) (1) "Extra hazardous service, including such service under conditions simulating war," comprehends service in peactime which is more hazardous than normal peacetime service. Service under conditions simulating war is extra hazardous, and other service will be considered extra hazardous, if performed (i) under conditions recognized as exceptionally dangerous, (ii) or involving risks beyond those ordinarily encountered in routine peacetime duties. Examples of service recognized as falling within the first category, as being exceptionally dangerous, include the following: While actually engaged in aircraft, submarine or diving and dangerous testing operations of instrumentalities of war in differentiation from service involving their routine peacetime use. Every injury or disease resulting directly from or aggravated by these operations, from preparation for flight to the final landing, as of an airplane, or from the casting off to the final berthing, as of a submarine, is considered as incurred in extra hazardous service. Servicing the aircraft while the propeller revolves, or loading or unloading explosives from aircraft is considered extra hazardous. Testing or demonstrating explosives, and demolition work with explosives, are considered extra hazardous. Other examples are duty on convoy or patrol vessels and while manning guns on merchant vessels. Service falling within the second category, as involving risks beyond those ordinarily encountered in routine peacetime duties, includes among others, the following: Under climatic or other conditions which subject the person to excessively high or low temperatures and predispose to disease, or upon exposure to any conditions which he would not customarily or ordinarily be called upon to endure in ordinary peacetime service. Individual service of exceptional risk or danger, as extinguishing a serious fire or conflagration, serving where explosives are stored in quantity, rescues, at sea, from drowning, or from burning buildings, may be considered extra hazardous, if the element of risk or danger above and beyond the routine of the service is clearly apparent. It is particularly to be noted that accidents with firearms or other instrumentalities of war on land or sea, unless directly traceable to the performance of duties incident to extra hazardous service as above outlined, are considered as involving only the routine risk or danger of the soldier or sailor.

(2) Campaigns, expeditions, and occupations are one type of service which may involve armed conflict, and usually contain extra hazardous service. A person on an expedition, injured at drill, target practice, practice march, work in the barracks, tents, or shops, would not generally be considered as injured incident to extra hazardous service. But, if such functions were performed under extra hazardous conditions, due to the locality, nearness of the enemy, without the usual and ordinary safeguards, etc., the conditions of the law may be met. Endemic diseases, and diseases arising out of exposure, on expeditions, may likewise be a basis of entitlement under Public No. 359. The diseases recognized as endemic to tropical service on the basis of present information are amebic and bacillary dysentery and malaria. The general test with regard to expeditions is: Did the injury or disease arise directly out of the performance, under orders, of military or naval duty peculiar to, or advancing the purpose thereof and under circumstances more dangerous than in normal peacetime service; if so, the circumstances are, as a rule, extra hazardous. Attention is invited to R. & P. A.–36–54 inclusive, relating to expeditions, etc.[1]

(3) The act specifies, "extra hazardous service, including such service under conditions simulating war." The expanding Army and Navy in 1940–41, from the standpoint of their training and operations, are to be regarded as under emergency conditions in relation to national defense in the face of threatened war. In the hearings on the bill, the representative of the War Department stated that men on maneuvers take practically the same risks they take during time of war. The representative of the Navy Depart-

[1] Not filed with the Division of the Federal Register.

ment stated that every man at sea today (in 1941) is engaged in service under conditions simulating war. The haste of this organization and training, the introduction of new methods of combat training, the inclusion of large numbers of men who would not expect to serve their country under arms except in time of war, are intended to be given special recognition in the act.

(4) Maneuvers such as those of 1940–41 and the operations of ships at sea during the same period are considered as having been performed under conditions simulating war and were extra hazardous.

(5) Any injury, or death resulting therefrom, incurred while engaged in extra hazardous service, if in line of duty and not the result of some cause independent of the extra hazardous service will be held within the contemplation of the law.

(6) It will be seen that the innumerable combinations of circumstances which may exist in connection with the incurrence of death, injury or disease clearly preclude a line of definite demarcation between service which is extra hazardous and that which is attended by what might be considered the ordinary hazards of peacetime service in the armed forces. Each claim will be adjudicated on the facts adduced therein and determinations will be reached through an adequate understanding of the purpose to be achieved and the exercise of sound judgment. (55 Stat. 844; 38 U. S. C. ch. 12 note)

§ 3.68 *Definition of "explosion of an instrumentality of war."* This term, as used in section 212, Public No. 212, 72d Congress, as amended by Public No. 743, 76th Congress, signifies a sudden explosion or a violent bursting of an instrumentality of war, such as the explosion of a bomb, hand grenade, shrapnel, bullet, etc., and is not applicable to disabilities incurred as a result of crashes or collapses of instrumentalities of war. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.69 *Forfeiture*—(a) *Public No. 2, 73d Congress.* Section 15 of this act, and section 9, Public No. 304, 75th Congress, provide for the forfeiture of pension or compensation to a person who knowingly makes false statements in connection with a claim.

(b) *Prior forfeiture bars payments under Public No. 2, 73d Congress, as amended.* By reason of section 11, Public No. 2, 73d Congress, and paragraph 2, section 14, of the act of August 9, 1921, a claimant whose rights were forfeited under section 504, World War Veterans' Act, is not entitled to benefits under Public No. 2, 73d Congress, as amended. However, when disability compensation based upon service-connected disability has been forfeited by a veteran because of submission of false or fraudulent evidence, compensation payable except for the forfeiture, from and after date of suspension of payments to the veteran, shall be paid to his wife, child or children, and/or dependent parents, such payments not to exceed the amount payable in case such veteran had died from such service-connected disability. Payment in such case may not be made for any period prior to October 17, 1940, as provided in section 9, of Public No. 866, 76th Congress. No compensation shall be paid to any dependent who has participated in the fraud for which the forfeiture was imposed. Where payments were suspended prior to October 17, 1940, because of forfeiture, a claim, which may be informal, for benefits under section 9, Public No. 866, 76th Congress, will be necessary. In those cases where payments are suspended on or subsequent to October 17, 1940, because of forfeiture of rights by a veteran because of submission of false or fraudulent evidence, action to determine the rights of the veteran's dependents of record will be taken without the requirement of an application by the veteran's wife, child or children, and/or dependent parents.

(c) *No forfeiture of pensions for violation of hospital rules.* Pension or compensation benefits are not subject to deductions because of violations of hospital rules.

(d) *Forfeiture for treasonable acts.* Any person shown by evidence satisfactory to the Administrator of Veterans' Affairs to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future benefits under laws administered by the Veterans' Administration pertaining to gratuities for veterans and their dependents; *Provided,* That any part of such benefits may be apportioned and paid to the dependents of such person, not exceeding the amount to which each dependent would be entitled if such person were dead. (Section 4, Public Law 144, 78th Congress, act of July 13, 1943.) (Sec. 15, 48 Stat. 11, sec. 9, 50 Stat. 662, sec. 9, 54 Stat. 1196, sec. 4, 57 Stat. 555; 38 U. S. C. 510, 555'a, 715, 715a, 728)

SCREENING BY AUTHORIZATION UNIT; EXAMINATIONS

§ 3.75 *Preliminary action by authorization unit.* (a) Upon receipt of an original application for disability compensation, or pension in the adjudication division, it will be referred to the authorization unit for review and development in accordance with established procedure. All reasonable assistance will be extended a claimant in the prosecution of his claim and all sources from which information may be elicited should be thoroughly developed prior to the submission of the case to the rating board. The application of this policy should not be highly technical and rigid. It is incumbent upon the claimant to establish his case in accordance with the law. Every legitimate assistance will be rendered a claimant in obtaining any benefit to which he is entitled and he will be given every opportunity to substantiate his claim. Information and advice to claimants will be complete and will be given in words that the average man can understand.

(b) The authorization unit will determine whether there exists a statutory or regulatory bar to entitlement prior to the presentation of the case to the rating board. In making determinations as to line of duty or wilful misconduct other than as to specific diseases and their sequelae, the responsible personnel of the authorization unit will be guided by the general policy of resolving all reasonable doubts in favor of the claimant. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.76 *Original examinations for disability compensation or pension.* In original claims for disability compensation or pension, either for peacetime or wartime service, service-connected or otherwise, an examination will not be authorized unless and until evidence is of record, either from the service departments, or in the form of affidavits, indicating the reasonable probability of a valid claim. If, after the development of the case, it is indicated that probability of a valid claim exists, an examination may be requested. Where the claimant appears in person and preliminary inquiry establishes the reasonable probability of a valid claim, an immediate physical examination may be requested. (38 U. S. C. ch. 12, Reg. 1 series.) Where claim is filed within six months from date of discharge, it will be rated initially on the records of the service department unless it would appear that error might result from such rating. In making examinations first priority is to be accorded pending cases filed more than six months after discharge and in those wherein it is impossible to rate upon service records. (See § 3.185.) (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

ESTABLISHMENT OF SERVICE CONNECTION AND APPLICATION OF RATING PRINCIPLES

Service Connection

§ 3.77 *Direct and presumptive service connection.* (a) Under Public No. 2 and Public No. 141, 73d Congress, the payment of disability compensation or pension is authorized in cases where it is established that disabilities are shown to have been directly incurred in or aggravated by active military or naval service within the dates prescribed under each act and under Public No. 344, 74th Congress, provided that such incurrence or aggravation is not the result of the wilful misconduct of the veteran. Under Public No. 141, 73d Congress, disability compensation is also authorized for disabilities presumptively service connected under the conditions hereinafter specified. Under Public No. 2, 73d Congress, disability pension is payable for disabilities directly incurred in or aggravated in line of duty in active peacetime service during an enlistment on and after April 21, 1898. Under Public No. 196, 76th Congress (July 19, 1939), any World War veteran suffering from paralysis, paresis, or blindness, or who is helpless or bedridden, as the result of any disability and who was in receipt of compensation therefor on March 19, 1933, may be restored to the compensation roll on or after July 19, 1939, where such disability was incurred in service directly or presumptively under the laws and interpretations covering this class of cases prior to March 20, 1933, if otherwise entitled, notwithstanding such disability is considered to have been incurred as the result of the wilful misconduct of the veteran. On or after October 17, 1940, under section 7 of Public No. 866, 76th Congress (October 17, 1940), any World War veteran, if oth-

erwise entitled, may be paid disability compensation for such disability, found to have been incurred in service, directly or presumptively under the laws and interpretations covering this class of cases prior to March 20, 1933, although he was not on the rolls as of March 19, 1933.

(b) In determinations involving the question of service connection due consideration shall be given to the places, types, and circumstances of service as shown by the service record, the official history of each organization in which the veteran served, his medical records, and all pertinent medical and lay evidence (Public No. 361, 77th Cong.). See § 3.31. (Secs. 1, 2, 49 Stat. 869; 38 U. S. C. 704a, 724)

§ 3.79 *Presumption of soundness under Public No. 141, 73d Congress.* (a) The presumption of soundness at enlistment under section 200 of the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, is for application except in cases where the evidence clearly and unmistakably discloses that the disease, injury, or disability had its inception before the period of active military or naval service.

(b) Where clear and unmistakable evidence shows that a disability had its inception before the period of active service, service connection on the ground of aggravation will be conceded in case there is any increase in the disability resulting from the disease or injury manifested on the record during active service. (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524; 38 U. S. C. 471, 471a)

§ 3.80 *Service connection for chronic diseases.* (a) Under Veterans' Regulation No. 1 (a), Part I, paragraph I (c), (38 U. S. C. ch. 12) pursuant to Public No. 2, 73d Congress or under Public No. 141, 73d Congress, a chronic disease becoming manifest to a degree of ten percent or more within one year from the date of separation from active wartime service or within one year after the date prior to which a disability must have been incurred as provided in Veterans' Regulation No. 1 (a), or Public No. 141, 73d Congress, whichever is the earlier, will be considered as having been incurred in service when the conditions specified in Veterans' Regulation No. 1 (a), Part I, paragraph I (c), or Public No. 141, 73d Congress, are met. The factual basis may be established by medical evidence, competent lay evidence, or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the one year period; and lay evidence should not merely contain conclusions based upon opinion, but describe the material and relevant facts as to the veteran's disability observed during such period. Where there is affirmative evidence to show that the chronic disorder is due to an intercurrent disease or injury suffered between the date of separation from active service and the onset of the chronic disorder, service connection under this paragraph will not be accorded. When service connection is established subsequent manifestations of the same chronic disease, unless clearly attributable to intercurrent causes, at no matter how remote a date, are service-connected. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service, will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clear-cut clinical entity at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity and sufficient observation to establish chronicity at the time, not merely isolated findings or diagnosis including the word "chronic." When the etiological identity is perfect, as leprosy, tuberculosis, syphillis, etc., there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service is not in fact shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity during service is not, in the opinion of the adjudicating agency, adequately supported, then there may be reason to require some showing of continuity after discharge to support the claim. Hospital confirmation of such diagnoses made after discharge from service is not routinely required; however, the veteran may well be held at the regional office, hospital or center for recheck on the following day, particularly for recheck of blood pressure, urinalysis, and further laboratory procedures, if in order. When hospitalization is required it should not be longer than absolutely necessary for confirmation of the diagnosis.

(b) Evidence which may be considered in rebuttal of service incurrence of a chronic disease will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary", appearing in Veterans' Regulation No. 1 (a), Part I, paragraph I (c), will not be taken to require a conclusive showing, but such showing as would in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease in question was not incurred in service within the meaning of Veterans' Regulation No. 1 (a), Part I, (38 U. S. C. ch. 12).

(c) The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation, but the fact of aggravation of disease or injury will be accepted only upon a showing of increase in disability from such condition during active service as required by Veterans' Regulation No. 1 (a), Part I, paragraph I (d), (38 U. S. C. ch. 12). (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.86 *Chronic diseases under Public No. 2, 73d Congress.* The service connection of chronic diseases under Veterans' Regulation No. 1 (a), (38 U. S. C. ch. 12), pursuant to Public No. 2, 73d Congress, is restricted to the following:

Anemia, primary.
Arteriosclerosis.
Arthritis.
Cardiovascular-renal disease, including hypertension (this term applies to combination involvements of the type of arteriosclerosis, nephritis and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the one-year period will be given the same benefit of service connection as any of the chronic diseases listed).
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis (this term is intended to cover all forms of valvular heart disease).
Endocrinopathies.
Epilepsies.
Hodgkin's disease.
Leukemia.
Leprosy.
Myocarditis.
Nephritis (nephrolithiasis is not a chronic disease within the meaning of this regulation but with a properly diagnosed nephritis, shown within one year from the date of discharge from service or the date prior to which a disability must have been incurred as provided in Veterans Regulation No. 1 (a), whichever is the earlier, a coexisting or subsequently developing nephrolithiasis may be considered as a part of the same condition).
Organic diseases of the nervous system (this term is intended to include the same disabilities as those listed on pages 110 and 111 of the Schedule for Rating Disabilities, 1945 Edition, as organic diseases of the central nervous system and residuals of these diseases).
Psychoses.
Thromboangiitis Obliterans (Buerger's Disease) (effective Sept. 26, 1947).
Tuberculosis, active.
Tumors, malignant, or of the brain.
Osteitis deformans (Paget's disease).

No conditions other than those listed above will be considered chronic diseases except upon approval by the Administrator of Veterans' Affairs. For the purposes of determining the existence of a ten percent degree of active tuberculosis within one year of discharge, or the date prior to which a disability must have been incurred as provided in Veterans' Regulation No. 1 (a), whichever is the earlier, active pulmonary tuberculosis diagnosticated by approved methods during the second year will be held to have preexisted the diagnosis six months in minimal (incipient) cases; nine months in moderately advanced cases; and twelve months in far advanced cases. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.88 *Chronic constitutional diseases under Public No. 141, 73d Congress.* The diseases listed on page 75, Schedule of Disability Ratings, 1925, and those included in Extension 6 to such Schedule, as well as the conditions enumerated in the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are subject to the one-year presumption of service connection provided for chronic constitutional diseases. (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524; 38 U. S. C. 471, 471a)

§ 3.89 *Presumptive service connection for diseases listed in the second proviso, section 200, World War Veterans' Act, 1924, as amended.* The presumption of incurrence for the diseases listed in the second proviso, section 200, World War

Veterans' Act, 1924, as amended, applies under Public No. 141, 73d Congress, except where clear and unmistakable evidence discloses that the disease, injury, or condition had inception before or after the period of active military or naval service. The presumption is not applicable in cases where the disability is due to the wilful misconduct of the veteran. (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524, 58 Stat. 752; 38 U. S. C. 471, 471a, ch. 12 note)

Service Connection for Neuropsychiatric Diseases

§ 3.90 *Presumptive service connection for neurophychiatric diseases.* Where it is shown (by reports of physical examination, or acceptable medical or lay affidavits) that disability from neuropsychiatric disease, spinal meningitis, paralysis agitans, or encephalitis lethargica existed to a ten percent degree or more, in accordance with the Schedule for Rating Disabilities, 1945 Edition, prior to January 1, 1925, and where evidence does not show clearly and unmistakably that such disability had its inception prior or subsequent to the period of active military or naval service, a rating will be made that the disability from neuropsychiatric disease, spinal meningitis, paralysis agitans, or encephalitis lethargica is presumed to have been incurred in military service in accordance with the terms of the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, as reenacted by Title III, Public No. 141, 73d Congress; *Provided,* That the veteran had active military or naval service between April 6, 1917, and November 11, 1918, inclusive, or prior to April 2, 1920, with the United States military forces in Russia. Rebuttal of the presumption will be in order where there is clear and convincing evidence that the disability arose from intercurrent trauma, organic disease not itself connected with service, or intercurrent infection arising subsequent to discharge and not as a result of military service. (See also § 3.89.) (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524, 60 Stat. 319; 38 U. S. C. 471, 471a, 736–738)

§ 3.91 *Interpretation of spinal meningitis.* Spinal meningitis will be interpreted as cerebrospinal fever, or cerebrospinal meningitis, i. e., the infectious disease due to the meningococcus, affecting primarily the cerebrospinal meninges. It will also be taken to include other primary forms of meningitis, such as primary pneumococcic or streptococcic meningitis, where the cerebrospinal meninges are involved alone or as a part of a generalized pneumococcic or streptococcic septicaemia.

§ 3.92 *Presumption of service connection for spinal meningitis.* The presumption of service connection will not be invoked where particular forms of meningitis are secondary to diseases or injuries not themselves service connected, such as (a) the pneumococcic form which is secondary to intercurrent pneumonia endocarditis, or disease or injury of the cranium or its fossae; (b) the pyogenic form, following intercurrent infections elsewhere in the body or occurring as a terminal condition in chronic maladies; (c) the miscellaneous forms, such as the meningitis secondarily supervening in intercurrent typhoid, diphtheria, influenza, etc. Disability from inflammation of the spinal meninges occurring in cerebrospinal syphilis will be rated with the misconduct provision of the law in mind.

§ 3.93 *Presumptive service connection for amoebic dysentery.* Where it is shown (by a report of physical examination, or acceptable medical or lay affidavits) that a veteran had amoebic dysentery developing a ten percent degree of disability or more prior to January 1, 1925, in accordance with the Schedule for Rating Disabilities, 1945 Edition, and where it is not shown by clear and unmistakable evidence that such disability was incurred prior to or subsequent to enlistment or acceptance into active military or naval service, a rating will be made that the amoebic dysentery is presumed to have been incurred in service. (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524, 60 Stat. 319; 38 U. S. C. 471, 471a, 736–738)

§ 3.94 *Neuropsychiatric diseases included.* The neuropsychiatric diseases included in the second proviso, section 200, World War Veterans' Act, 1924, as amended, include the following:

(a) *Psychoses.* Manic-depressive, dementia praecox, paranoid, associated with organic diseases or injuries.

(b) *Psychoneuroses and neuroses.* Neurasthenia, psychasthenia hysteria, anxiety neurosis, occupational neurosis, compulsion neurosis, tics.

(c) *Vaso-motor and trophic disorders.* Raynaud's disease, angio-neurotic oedema, erythro-melalgia, Buerger's disease (thromboangitis obliterans, endarteritis obliterans).

(d) *Neurological diseases.* Diseases of the cranial and peripheral nerves, diseases of the spinal cord, diseases of the pons, medulla and basal ganglia, diseases of the cerebellum, diseases of the meninges, diseases of the brain (embolism, hemorrhage into the brain, thrombosis, hydrocephalus, tumors, abscess, muscular dystrophies, and myopathies, chorea, athetosis, tremors, paralysis agitans, multiple sclerosis). (See § 3.139 in considerations under Publics No. 196 and No. 866, 76th Cong.)

(e) *Endocrinopathies.* Diseases of the thyroid gland (except neoplasms, simple enlargements and abscesses), diseases of the parathyroid glands, diseases of the pituitary (hypopituitarism, Froehlich's syndrome, dystrophia adiposogenitalis; hyperpituitarism-acromegaly), diseases of the gonads, diseases of the adrenal glands, polyglandular syndromes.

(f) *The epilepsies.* (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524; 38 U. S. C. 471, 471a)

§ 3.95 *Service connection for gastric or duodenal ulcer (peptic ulcer) under Public No. 2, 73d Congress.* (a) Effective February 8, 1947, wartime service connection is in order under Public No. 2, 73d Congress, as amended, for gastric or duodenal ulcer (peptic ulcer) diagnosed subsequent to wartime service, if the following requirements are met:

(1) The veteran had wartime service of 90 days or more;

(2) The evidence, including medical principles, does not show inception of the ulcer prior to wartime service;

(3) (i) The ulcer was properly diagnosticated within six months from the date of termination of active wartime service; or

(ii) The ulcer was properly diagnosticated more than six months but within one year from the date of termination of active wartime service, with satisfactory evidence of continuity of characteristic symptoms during the first six months after termination of active wartime service.

(b) A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

(c) In a case where the record of the service department or other competent evidence shows the manifestation of symptomatology of a gastric or duodenal ulcer (peptic ulcer) during service, and the nonexistence thereof prior to such service, it is, of course, unnecessary to resort to the application of the criteria herein contained for the purpose of establishing service connection.

(d) The criteria herein contained do not apply to a case in which the evidence shows that the ulcer pre-existed service or became manifest more than one year after termination of active wartime service. Such cases are to be handled in the same manner as claims for service connection for other conditions. (Sec. 11, 46 Stat. 995, sec. 27, 48 Stat. 524, 60 Stat. 319; 38 U. S. C. 471, 471a, 736–738)

Service Connection for Tuberculous Diseases

§ 3.96 *Presumptive service connection for active tuberculosis.* Where an active tuberculous disease of ten percent degree or more in accordance with the Schedule for Rating Disabilities, 1945 Edition, is shown to have developed prior to January 1, 1925, such active tuberculous disease will be considered as incident to service in accordance with the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, as reenacted under Title III, Public No. 141, 73d Congress; *Provided,* That the claimant had active military or naval service between April 6, 1917, and November 11, 1918, inclusive, or prior to April 2, 1920, with the United States military forces in Russia. (See § 3.89.)

§ 3.97 *Evidence necessary to show active pulmonary tuberculosis.* The showing of active tuberculous disease of ten percent degree or more prior to January 1, 1925, will be contingent upon reports of physical examination, or acceptable medical or lay affidavits, citing the facts that would demonstrate the existence of such condition. Lay affidavits when rele-

vant, competent, and material, will be given due consideration in connection with the other evidence submitted; such affidavits to be acceptable must be confined to statements of fact and not of opinion.

§ 3.99 *Findings establishing a diagnosis of active pulmonary tuberculosis.* In all cases in which a determination is to be made of the development of active tuberculosis to a ten percent degree of disability or more prior to January 1, 1925, as provided in section 200 of the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, the following standards will be applied: Active pulmonary tuberculosis, diagnosticated by approved methods will be held to have preexisted the diagnosis six months in minimal (incipient) cases; nine months in moderately advanced cases, and twelve months in far advanced cases.

Proximate Results

§ 3.101 *Secondary condition.* Disability which is proximately due to or the result of a properly service-connected disease or injury is compensable, unless such disability is shown to be the result of a nonservice-connected intervening cause. When service connection is thus established for a secondary condition the secondary condition will be considered a part of the original condition for all purposes. (38 U. S. C. ch. 12, Reg. 3 (a))

Wartime Service Connection for Malaria and Chronic Diseases Characteristically Tropical in Origin.

§ 3.102 *Wartime service connection.* (a) Conditions which may be considered under paragraphs b (2) and (3) of this section are restricted to the following: amebic dysentery; bacillary dystentery; filariasis (Bancroft's type); leishmaniasis, including kala-azar; schistosomiasis; trypanosomiasis; yaws; and malaria.

(b) Wartime service connection for the above enumerated conditions may be granted where:

(1) There is available an official record of the presence of the disease during wartime service, without clear and unmistakable evidence, including medical principles, of the existence of the disease prior to such service.

(2) Such chronic disease is shown by proper diagnosis, made within one year from date of termination of active wartime service, in cases of veterans who had such service in the tropics, or in a locality having a high incidence of the disease under consideration, and the record is without evidence of inception prior or subsequent to war service; provided, that residence during the year following this service was not in the tropics or in a region where the particular disease is endemic.

(3) A notation was made at discharge of a history of the presence of the disease during wartime service, in cases of veterans who had such service in the tropics or in an area having high incidence of the particular disease, and the history is not negatived by evidence of inception prior or subsequent to war service; provided the claim is filed within one year from date of discharge.

(c) In making a determination under paragraphs (b) (2) or (3) of this section, allowing service connection for any of these conditions other than malaria, it is necessary that the condition under consideration be shown to have been properly diagnosed on Veterans' Administration examination (38 U. S. C. ch. 12).

Service Connection for Dental Disabilities

§ 3.104 *Required period of service.* Compensation may be awarded for a dental condition under Veterans' Regulation No. 1 (a), Part I, (38 U. S. C. ch. 12) and Title III, Public No. 141, 73d Congress, where active service was performed on or after April 6, 1917, and prior to November 12, 1918, or prior to April 2, 1920 for persons who served with the United States military forces in Russia, or on or after November 12, 1918, and before July 2, 1921, where there was prior service between April 6, 1917, and November 11, 1918, or (under Veterans' Regulation No. 1 (a) only) where active service was performed in the Spanish American War, Boxer Rebellion, Philippine Insurrection or World War II as defined by §§ 3.1000 (a), 3.1001 (a), 3.1002 (a), 3.1017 (a), and 3.0 (a) and (b). For the purposes of Veterans' Regulation No. 1 (a) the veteran must have been discharged under conditions other than dishonorable, and under Public No. 141, 73d Congress, not dishonorably discharged, and the disability must have been incurred in or aggravated by active service during the defined periods and not due to wilful misconduct. However, where incurrence of the disability is shown prior to the beginning date of the war concerned or where the enlistment commenced subsequent to the termination thereof, service connection may be established only in accordance with 38 U. S. C. ch. 12, Reg. 1 (a), Part II. (Sec. 1, 48 Stat. 8, 524, sec. 5, 50 Stat. 661; 38 U. S. C. 424a, 473a, 701)

§ 3.105 *Dental determinations.* Determinations relative to the origin or aggravation in active service of dental conditions will be in accordance with the requirements of Part I, paragraph I (a), and Part II, paragraph I (a), respectively, of the Veterans' Regulation No. 1 series, as amended (38 U. S. C. ch. 12), and section 28, Title III, Public No. 141, 73d Congress.

(a) When a period of six months or over of continuous active service during a wartime enlistment which began prior to November 12, 1918, or prior to April 2, 1920, for persons who served with the United States military forces in Russia, or which began on or after November 12, 1918, and before July 2, 1921, where there was prior service between April 6, 1917, and November 11, 1918, or before 12 o'clock noon, December 31, 1946, is shown, service connection may be considered as having been established under the World War Veterans' Act, 1924, as amended, reenacted by Public No. 141, 73d Congress, or Veterans' Regulation No. 1 (a), Part I, paragraph I (a), as amended, for World War II service, for any dental disability except such as were recorded at time of enlistment subject to the provisions of § 3.107 (a), existed prior thereto, or otherwise rebutted, shown to have existed within a year from date of discharge from those periods of service. If the claimant was or is discharged after July 2, 1921, or after the date of termination of World War II the one year period for the establishment of such service connection will begin on July 2, 1921, or the date of termination of World War II. Service connection will not be considered as having been established when the evidence clearly shows that the disabilities or conditions existed or were recorded at the time of enlistment subject to the provisions of § 3.107 (a) or originated subsequent to discharge from causes not related to service. (Secs. 1, 28, 48 Stat. 8, 524, sec. 9, 57 Stat. 556; 38 U. S. C. 701, 722, ch. 12 note)

§ 3.106 *Evidence to establish service connection.* Service connection for dental disabilities will be established by service records, documentary evidence in the form of reports of examinations (dental or physical), affidavits of dentists or physicians, or affidavits of fact from two or more disinterested parties. The disability must be shown to have been incurred in or aggravated by service as provided herein. Affidavits by dentists or physicians must give the claimant's full name, the date he was first examined or treated, the date of subsequent treatments, if any, and contain a complete and detailed statement of the symptoms observed and diagnosis made. The name or number of all defective or missing teeth noted and the character and extent of any pathological condition of the investing tissues observed should be included. If exact dates cannot be given, the expression "on or about", an approximate date, may be considered. Vague expressions, such as "sometime after discharge", or "since discharge", will not be accepted. Affidavits from disinterested parties must show the circumstances under which knowledge of the claimant's disability was obtained and as far as possible describe the symptoms and location of the disability observed.

§ 3.107 *Service connection where dental disability is not of compensable degree.* Determinations relating to the origin or aggravation in active service of dental conditions not of compensable degree where claim is made for treatment will be in accordance with §§ 3.105 and 3.106, and current instructions covering service connection and aggravation under Veterans' Regulation No. 1 (a), Part I, as amended (38 U. S. C. ch. 12). However, the statutory presumption provided in section 200 of the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, or Veterans' Regulation No. 1 (a), Part I, paragraph I (b), as amended, as to soundness of condition at time of entrance into active service will not be applicable in cases of dental conditions not of compensable degree.

(a) The furnishing of treatment or prosthesis for non-compensable dental conditions during service will not be considered per se as aggravation of a dental condition shown to have existed prior to entrance into active service. However, service connection by aggravation will be conceded where a tooth is noted at time of enlistment as defective but was restor-

able and is extracted during service or where pyorrhea is noted at enlistment but during service necessitates extraction of a tooth or teeth. Conversely, service connection by aggravation will not be conceded if the tooth at enlistment was classified as defective but was not restorable.

(b) Effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their relationship to other associated service-connected diseases or injuries will be observed in the adjudication of claims based upon dental conditions where a determination to that effect is properly in order.

§ 3.108 *Adjudication of application for dental treatment.* A formal application by or in behalf of a veteran is not required where claim is made for dental treatment only. Whenever an application for dental treatment is received, the application will be forwarded by the responsible medical activity to the adjudication officer, field office, or chief, claims division, veterans claims service, central office, where an official request for active service data will be prepared and forwarded in accordance with existing procedure. When the service data are received, the claim will be considered by the rating board for determination of service connection. The ratings in such cases will be made upon the regular rating sheets.

§ 3.110 *Severance of service connection in dental cases.* When service connection for a dental condition, compensable or non-compensable, is considered clearly and unmistakeably erroneous, the procedure provided in § 3.9 (a) will be for application.

Service Connection for Disability or Death the Result of Examinations, Training, Hospitalization, or Medical or Surgical Treatment

§ 3.121 *Compensation for disability or death the result of training, hospitalization, or medical or surgical treatment under section 31, Title III, Public No. 141, 73d Congress, the result of examinations under section 12, Public No. 866, 76th Congress, or the result of training under paragraph 4, Part VII, reg. 1 (a), as amended (38 U. S. C. ch. 12).* For the purposes of the sections referred to:

(a) Where any veteran suffers or has suffered a disease or an injury, or the aggravation of any existing disease or injury as the result of training, hospitalization, or medical or surgical treatment, awarded under any of the laws granting monetary or other benefits to World War veterans, or as the result of having submitted to examination under authority of any of the laws granting monetary or other benefits to World War veterans, and not the result of his wilful misconduct, when such disease, injury or aggravation results in additional disability to or the death of such veteran, the benefits of Public No. 2, as amended, Public No. 78 and Public No. 141, 73th Congress, will be awarded in the same manner as if such disability, aggravation or death was service connected within the meaning of such laws. The benefits of this section will be in lieu of the benefits, if payable, under the act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended.

(b) The benefits granted under section 31, Title III, Public No. 141, 73d Congress, will not be awarded, unless application is made therefor within two years after such injury or aggravation was suffered, or such death occurred, or after the passage of Public No. 141, 73d Congress, whichever is the later date, except that in cases where payments being made as of March 19, 1933, under section 213, World War Veterans' Act, 1924, as amended, were discontinued as a result of the review pursuant to section 17, Public No. 2, a new claim will not be necessary but all cases falling within this category will be reviewed and any payments hereunder will be effective as of March 28, 1934.

(c) No benefits under section 12, Public No. 866, 76th Congress, on account of disability or death resulting from disease or injury incurred or aggravated in submitting to an examination under authority of any of the laws granting monetary or other benefits to World War veterans, other than those referred to in section 31 of Public No. 141, 73d Congress, shall be awarded effective prior to the date of application on or after October 17, 1940, and unless the application be made therefor within two years after such injury or aggravation was suffered, or such death occurred, or after October 17, 1940, whichever is the later date: *Provided,* that in claims for death benefits the effective date of the award will be October 17, 1940, or the day following the date of death, whichever is the later, if application is filed within one year of the veteran's death.

(d) No benefits under paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended, on account of disability or death resulting from an injury or aggravation of an injury incurred in pursuing a course of vocational rehabilitation shall be awarded prior to the date of application on or after March 24, 1943, and unless application is made therefor within two years after such injury or aggravation was suffered or such death occurred or after March 24, 1943, whichever is the later date: *Provided,* That in claims for death benefits the effective date of the award will be March 24, 1943, or the day following the date of death, whichever is the later, if application is filed within one year of the veteran's death. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, sec. 2, 57 Stat. 43; 38 U. S. C. 501a, 501a–1, ch. 12 note)

§ 3.123 *Initial determinations and adjudicative action under section 31, Public No. 141, 73d Congress, as amended by section 12, Public No. 866, 76th Congress, and under paragraph 4, Part VII, Reg. 1 (a),* as amended. (38 U. S. C. ch. 12.) Disability compensation will be payable only when it is determined (1) that there is additional disability, and (2) that such additional disability resulted from disease or injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment, or examination under authority of any of the laws granting monetary or other benefits to World War veterans. The following principles will be observed:

(a) The determination that additional disability exists will be based upon a comparison of the beneficiary's physical condition immediately prior to the disease or injury on which the claim for compensation is based, with the subsequent physical condition resulting from the disease or injury. Where it is determined that there is additional disability resulting from a disease or injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment, or examination, compensation will be payable only for the additional disability in accordance with the terms of the effective Schedules of Disability Ratings, the terms of the General Law (act of July 14, 1862) where service was prior to April 21, 1898, and the terms of the various service pension acts. This comparison will be made separately for each body part involved. As applied to medical or surgical treatment, the physical condition prior to the disease or injury will be the condition which the specific medical or surgical treatment was designed to relieve; as applied to examinations, the physical condition prior to the disease or injury will be the condition at time of beginning the physical examination as a result of which the disease or injury was sustained.

(b) In determining whether such additional disability results from a disease or an injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment or examination, the following considerations will govern:

(1) It will be necessary to show that the additional disability is actually the result of such disease or injury or an aggravation of an existing disease or injury and not merely coincidental therewith.

(2) Compensation will not be payable for the continuance or natural progress of diseases or injuries for which the training, or hospitalization, etc., was authorized.

(3) The mere fact that aggravation occurred will not suffice to make the additional disability compensable in the absence of proof that it resulted from disease or injury or an aggravation of an existing disease or injury suffered as the result of training, or hospitalization, etc.

(4) Compensation is not payable for either the usual or the unusual after-results of approved medical care properly administered, in the absence of a showing that the disability proximately resulted through carelessness, accident, negligence, lack of proper skill, error in judgment, etc. The question as to what is an accident, for the purpose of determining entitlement to benefits under section 31, Public No. 141, 73d Congress, as amended by section 12, Public No. 866, 76th Congress, and under paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12), is one for determination by the adjudicating agencies.

(5) Compensation will not be payable for the residuals of medical care or treatment given outside of a Government hospital or clinic unless such medical care or treatment was specifically authorized under one of the acts referred to in these regulations, or unless it is held to be adjunct treatment in connection with other treatment specifically authorized.

(6) The claimant's wilful misconduct or failure to follow instructions in connection with training, hospitalization, medical or surgical treatment, or examination, will bar him from the receipt of compensation hereunder except in the case of incompetent claimants. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, sec. 2, 57 Stat. 43; 38 U. S. C. 501a, 501a–1, ch. 12 note)

§ 3.124 *Combination of ratings under section 31, Public No. 141, 73d Congress, as amended by section 12, Public No. 866, 76th Congress, and under paragraph 4, Part VII, Reg. 1 (a), as amended (38 U. S. C. ch. 12).* Where two or more disabilities exist, including the disability determinable under section 31, Public No. 141, 73d Congress, section 12, Public No. 866, 76th Congress, or paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended, the several disabilities will be evaluated under the Schedule of Disability Ratings, 1945, and combined. For the purpose of section 31, section 12 and paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended, ratings will not be combined with ratings for diseases or injuries not due to service. Consequently, where benefits are currently payable for a nonservice-connected disability and benefits are found payable under section 31, section 12 or paragraph 4, payments under these sections will not be authorized unless it is a greater benefit. Where a veteran with wartime service has suffered a compensable disability and a service-connected compensable disability due to war or peacetime service, the evaluation of disability will be combined. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, sec. 2, 57 Stat. 43, 60 Stat. 319; 38 U. S. C. 501a, 501a–1, 736–738, ch. 12 note)

Principles Governing Statutory Ratings

§ 3.130 *Statutory award for loss of use of creative organ.* Under the last paragraph of section 202 (3) of the World War Veterans' Act, as amended July 3, 1930, as reenacted by Public No. 141, 73d Congress, any veteran shown to have suffered the loss of the use of a creative organ as the result of an injury received in the active service in line of duty between April 6, 1917, and November 11, 1918, shall be entitled to a statutory award of $30 per month, independently of any other compensation which may be payable under said act: *Provided, however,* That if such disability was incurred while the veteran was serving with the United States military forces in Russia, the dates herein stated shall extend from April 6, 1917, to April 1, 1920. This statutory award shall be payable from the date the loss of the use of the creative organ is shown to exist, subject to the provisions of Veterans' Regulation No. 2 (a), Part I (38 U. S. C. ch. 12), and when payable shall be added to any other compensation payable to the veteran. (Sec. 13, 46 Stat. 998, sec. 28, 48 Stat. 524, sec. 2, 60 Stat. 910; 38 U. S. C. 471a–3, 473, 722)

§ 3.131 *Principles for determining entitlement to the statutory award for loss of use of a creative organ.* The following principles governing a rating as to entitlement to the statutory award provided by section 202 (3), World War Veterans' Act, 1924, as amended July 3, 1930, as reenacted by Public No. 141, 73d Congress, for the "loss of use of a creative organ" will be observed:

(a) The loss of use must first be established. Avulsion of one or both testicles or ovaries will suffice for this purpose, as will atrophy when it is demonstrated by proper diagnostic methods that no procreative function remains in the atrophied organ.

(b) The loss being apparent or the loss of use having been properly demonstrated, the additional statutory award of $30 monthly will be authorized when it is established by the official records of the service departments or other competent evidence that the loss or loss of use is the result of trauma incurred in the line of duty in the military service between the specified dates or had its inception in and therefore is directly attributable to disease incurred in the line of duty in the military service within the dates specified; *Provided, however,* That the statutory award will not be granted when the antecedent disease is service connected by statutory presumption.

(c) The statutory award will be granted for loss or loss of use of a creative organ resulting from gunshot wounds or other accidental trauma sustained in service or resulting from operations performed in service for the relief of other conditions, the creative organ becoming incidentally involved. In this regard, however, undescended testicles removed by operation will be considered as devoid of spermatogenesis unless laboratory examinations at the time of the orchidectomy determined the presence of viable spermatozoa.

(d) Loss or loss of use traceable to an operation performed subsequent to service, if the operation is one of election, will not entitle to the statutory award. If, however, the operation after discharge was required for the correction of a specific injury caused by a preceding operation in service and resulted in the loss or loss of use of a creative organ the statutory award may be granted.

(e) Atrophy resulting from mumps followed by orchitis in service is service connected. Mumps, however, not complicated by orchitis will not suffice as the antecedent cause of subsequent atrophy.

(f) Cases wherein there is uncertainty as to whether the veteran is entitled to the statutory award for the loss or loss of use of a creative organ, and all cases of women veterans where this question is involved, will be submitted to the director, claims service, branch office, for determination. (Sec. 13, 46 Stat. 998, sec. 28, 48 Stat. 524, sec. 2, 60 Stat. 910; 38 U. S. C. 471a–3, 473, 722)

§ 3.132 *Payment of statutory award of $60 per month for arrested tuberculosis.* Under the third paragraph of section 202 (7), World War Veterans' Act, 1924, as amended July 2, 1926, as reenacted by Public No. 141, 73d Congress, any veteran having had a service-connected active tuberculous disease of compensable degree, which has reached a condition of complete arrest, whose aggregate disabilities, including that resulting from tuberculosis, evaluated in percentage terms in accordance with the Schedule for Rating Disabilities, 1945 Edition, entitle him to a monthly award of compensation of less than $60, shall be entitled to a statutory award of not less than $60 per month as compensation in full for all disabilities including that resulting from tuberculosis. However, for any period during which the veterans' disabilities, including that resulting from the tuberculous disease, evaluated in accordance with the Schedule for Rating Disabilities, 1945 Edition, entitled him to an aggregate award of $60 or more per month, the provisions of this paragraph regarding the statutory award for arrested tuberculosis will be met by awarding the veteran the amount determined in accordance with the schedule and extensions thereto. (Sec. 9, 44 Stat. 794, sec. 27, 28, 48 Stat. 524, sec. 2, 60 Stat. 319, 910; 38 U. S. C. 471a, 471a–3, 473, 722, 736–738)

Determinations of Active Pulmonary Tuberculosis

§ 3.133 *Effect of diagnoses of active tuberculosis.* (a) Service department diagnoses of active pulmonary tuberculosis will be accepted unless, after considering all the evidence including that favoring or opposing tuberculosis, and favoring or opposing activity, a board of medical examiners or the chief medical officer certify that such diagnoses were incorrect. Doubtful cases may be referred to the branch medical director, in field cases or to the chief medical director in central office cases.

(b) Diagnoses of active pulmonary tuberculosis by the medical authorities of the Veterans' Administration as the result of examination, observation or treatment, will be accepted for rating purposes. Reference to the chief medical officer will be in order in questionable cases and if necessary to the branch medical director in field cases or to the chief medical director in central office cases.

(c) Diagnoses of active pulmonary tuberculosis by private physicians will not be accepted to show the disease initially manifest after discharge from active service unless confirmed by acceptable clinical, X-ray and laboratory studies or by a finding of active tuberculosis based upon acceptable hospital observation or treatment.

§ 3.135 *Determination of arrest in tuberculosis.* (a) A veteran determined to have had active pulmonary tuberculosis, will be held to have reached a condition of complete arrest when there is compliance with the criteria of arrested pulmonary tuberculosis as defined by the National Tuberculosis Association and adopted by the Veterans' Administration, viz: "All constitutional symptoms absent. Sputum, if any must be concentrated and found microscopically negative for tu-

bercle bacilli. Lesions stationary and apparently healed, according to X-ray examination. No evidence of pulmonary cavity. These conditions shall have existed for a period of six months, during the last two of which the patient has been taking one hour's walking exercise twice daily, or its equivalent."

(b) Arrest of extra-pulmonary forms of tuberculosis will be considered to have been reached when there is a healed lesion. If there are two or more foci of such tuberculosis, one of which is active, the statutory award for arrest will not be made until the tuberculous process has reached arrest in its entirety.

(c) Service connection of disability predicated upon a diagnosis of active tuberculosis by the service departments and consequent statutory awards and ratings in effect March 19, 1933, are entitled to the protection afforded under sections 27 and 28, Public No. 141, 73d Congress, and Public Law No. 458, 79th Congress.

§ 3.136 *Rating of arrest in non-pulmonary tuberculosis.* Disabilities in different body parts or organs resulting from arrested tuberculosis will be separately evaluated and combined for rating purposes in accordance with the Schedule of Disability Ratings, 1945 and Extensions thereto. The rating of disability from non-pulmonary forms of arrested tuberculosis will be in accordance with the terms of the Schedule of Disability Ratings, 1945, and Extensions thereto, as applied to resulting ankylosis, limitations of motion of joints, degree of fixation or angulation of the vertebral column, etc. Where, by surgical intervention, it has been possible completely to extirpate a tuberculous focus, as in nephrectomy, adenectomy, orchidectomy, amputation of a part, etc., leaving no other tuberculous focus, the rating and statutory award of not less than $60 per month for arrested tuberculosis will be applicable in accordance with the foregoing, subject to the provisions of § 3.225.

§ 3.137 *Rating of reactivation in cases of arrested tuberculosis.* In rating tuberculous disabilities to which the statutory award is not applicable, as when the diagnosis for the period of the disability upon which the rating is based is expressed in terms reflecting activity, the rating of the disability for such period shall be made in accordance with the applicable Schedule or Schedules of Disability Ratings, and extensions. If a period of complete arrest is interrupted by activity, the payment for arrested tuberculosis will cover only the period of arrest and will be terminated as of the date of determined reactivation, from which a rating will be made consistent with the physical findings pending reattainment of complete arrest.

Restoration or Grant of Benefits for Claimants Suffering from Paralysis, Paresis, or Blindness, or Who Are Helpless or Bedridden Due to Wilful Misconduct

§ 3.138 *Application of Publics Nos. 196 and 866, 76th Congress.* (a) On and after July 19, 1939, the date of enactment of Public No. 196, 76th Congress, any World War I veteran suffering from paralysis, paresis, or blindness, or who is helpless or bedridden as the result of any disability, and who was in receipt of compensation therefor on March 19, 1933, and on or after October 17, 1940, the date of enactment of Public No. 866, 76th Congress, any World War I veteran suffering from paralysis, paresis, or blindness, or who is helpless or bedridden as the result of any disability may be awarded compensation under the laws and interpretations governing this class of cases prior to the enactment of Public No. 2, 73d Congress, subject to the limitations, except as to wilful misconduct, contained in sections 27 and 28 of Public No. 141, 73d Congress, as amended: *Provided,* That compensation authorized under section 26 of Public No. 141, 73d Congress, will not be reduced or discontinued as a result of the application of the enactment: *And provided further,* That no payment of disability compensation under Public No. 866, 76th Congress, will be made for any period prior to the date of application therefor, which may be informal where there is of record a formal application, Veterans' Administration Form 8–526.

(b) In the application of the limitations contained in sections 27 and 28 of Public No. 141, 73d Congress, except as to wilful misconduct, it will be borne in mind that all reasonable doubts will be resolved in favor of the veteran. The delimiting dates of World War I under existing legislation will be applied; for the purposes of Publics Nos. 196 and 866, 76th Congress, the ending date of World War I will, therefore, be April 1, 1920, for those who served with the United States military forces in Russia, or July 2, 1921, for those who reenlisted on or after November 12, 1918, and before July 2, 1921, where there was prior service between April 6, 1917, and November 11, 1918. (See § 3.0 (a).)

(c) The compensation award or disability rating in the case of any World War I veteran restored to the rolls or determinable under Public No. 196, 76th Congress, or granted disability benefits under section 7 of Public No. 866, 76th Congress, will be adjusted at any time upon the happening of a change in any of the contingencies upon which the current status is predicated, such as a change in family relationship, a change in physical condition, etc., as disclosed by competent evidence or a report of physical examination, and the effective date of the adjustment will be in accordance with the applicable regulations. (Sec. 7, 54 Stat. 1196, 53 Stat. 1067; 38 U. S. C. 703b)

§ 3.139 *Principles for observance in application of Public Nos. 196 and 866, 76th Congress.* (a) In interpreting the diseases specified in the first proviso of section 200 of the World War Veterans' Act, as amended, "paralysis" will be taken to mean the more massive motor or sensory losses, involving one or both of the upper or lower extremities, resulting from lesions of the central nervous system which are regarded as due to wilful misconduct. For example, the hemiplegia consequent upon cerebral hemorrhage in syphilitic cerebral arteritis; also the ataxic gait of tabes dorsalis; the spastic paraplegia of primary lateral sclerosis; the flaccid or spastic paralysis of myelitis; gait disturbances in disseminated sclerosis; the paralysis of limbs in syphilitic meningo-myelitis, etc. The rating in these cases will date from the onset of the station or gait disturbances to a degree which reduces earning capacity in accordance with the provisions of section 202 (4), second paragraph, of the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress. Localized palsies of cranial or peripheral nerves, due to wilful misconduct, will not be considered "paralysis" within the meaning of the first proviso of section 200.

(b) "Paresis" will be interpreted as general paralysis of the insane or paretic dementia.

(c) Visual disability due to syphilitic lesions of the second cranial (optic) nerve, or to gonorrheal ophthalmia, will be considered as "blindness" when 5/200 or less vision in both eyes is present after proper correction.

(d) By "helpless" will be understood a condition requiring the assistance of other persons, though not necessarily rendering the claimant in constant need of a nurse or attendant.

(e) By "bedridden" will be understood that condition which, through its essential character, actually requires that the claimant remain constantly in bed. The fact that a claimant has voluntarily taken to bed, or that a physician has prescribed rest in bed for a greater or lesser part of the day in order to promote convalescence or cure, will not necessarily mean that such claimant is to be regarded as helpless or bedridden, his further right to the additional allowance for an attendant or nurse will be considered in the same manner as for any other case.

(f) The ratings for cases held to be actually helpless or bedridden will date from the onset of such conditions.

(g) While the conditions specified in the first proviso of section 200 of the World War Veterans' Act, 1924, as amended, are usually of a permanent nature, the law does not require the individual case to be one of permanent disability in order that the benefits of the said proviso shall be applicable.

(h) Except for cases comprehended within these interpretations, all other disabilities due to wilful misconduct will continue to be rated in accordance with current regulations. Cases falling under the first proviso of section 200 of the World War Veterans' Act, as amended, as reenacted by Public No. 141, 73d Congress, may be connected directly or presumptively (under the second proviso of said section) with the active military or naval service.

Application of Rating Schedule

§ 3.141 *Use of 1925 and 1945 Rating Schedules.* (a) The Schedule for Rating Disabilities, 1945, applies to disabilities for which service-connection is granted or continued under Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), including wartime and peacetime service-connection, or Public No. 141, 73d Congress, or where there is entitlement

to consideration under part III, Veterans' Regulation No. 1.(a), as amended by Veterans' Regulation No. 1 (c) and to disabilities considered as service connected under section 31, title III, Public No. 141, 73d Congress, section 12, Public No. 866, 76th Congress, and paragraph 4, part VII, Veterans' Regulation No. 1 (a), as amended.

(b) Ratings under the Schedule of Disability Ratings, 1925, in effect April 1, 1946, will be continued in the absence of change in the physical or mental condition of the veteran: *Provided*, That if there is increase in the severity of the condition, the rating in effect on April 1, 1946, under the 1925 schedule will not be reduced and that statutory awards and ratings under the World War Veterans' Act, 1924, as amended, reenacted by Public No. 141, 73d Congress, will be granted or continued.

(c) When one and not the other of the two schedules applies, only the rating of the applicable rating schedule will be cited. When both apply, concurrent ratings are required under both schedules, with separate evaluations under a single diagnosis and rating code. (60 Stat. 319; 38 U. S. C. 736–738)

§ 3.142 *Special action where evaluations provided under the Rating Schedule, 1945, are considered inadequate or excessive.* (a) Exceptional cases to which the application of the 1945 Schedule is not understood, or with regard to which evaluation under this schedule is considered inadequate or excessive, may be submitted by the adjudication officer for advisory opinion or for reevaluation to the Director, Claims Service, branch office. He will return the case with appropriate instructions if he finds that provisions of the schedule have not been properly applied or that proper development has not been accomplished, or will forward the case to the Assistant Administrator for Claims, Attention: Director, Veterans' Claims Service, Central Office. Questionable special monthly compensation cases will be similarly submitted. Severe disabilities considered total, but for which current procedure does not authorize a total rating will be transferred direct to the Assistant Administrator for Claims, Attention: Director, Veterans' Claims Service in accordance with Veterans' Administration claims procedures. Where total disability is claimed and a submission hereunder is contemplated, a Veterans' Administration Form 8–527, Employment Statement, will be obtained and other indicated development of the evidence accomplished prior to the release of the records by the custodial office. The submission in any case comprehended by this regulation will include the claims folder, a recent medical examination, and definite recommendation from the submitting agency concerning evaluation of every disability under the schedule as interpreted by the submitting agency, and concerning schedular changes deemed advisable by reason of the particular situation encountered. However, cases will not be withdrawn from appellate channels for submission under this regulation, except as the Board of Veterans Appeals may join in reference of such cases with their recommendation. (38 U. S. C. ch. 12, Reg. 3 (a))

(b) Rating agencies are authorized to assign total disability ratings under Veterans' Regulation No. 1 (a), parts I and II (38 U. S. C. ch. 12), as authorized by paragraph 16, page 5, 1945 Rating Schedule, regardless of the age of the veteran; and under Veterans' Regulation No. 1 (a), part III, subject to the age requirements of paragraph 17, page 6, 1945 Rating Schedule. In favorable determinations of permanence of total disability in cases of veterans under forty years of age, the rating agency must assure itself, by deliberative consideration in which all three members of the board participate, that there is reasonable certainty of continuance of this degree of disability throughout life. Single disabilities of the extremities, even though severe, such as amputations, should not be taken to produce permanent and total disability until it is shown after hospitalization and convalescence that the veteran has been unable to secure employment on account of the disability and through no fault of his own. With these younger men, the fact that injuries, including single or multiple fractures, or diseases such as pulmonary tuberculosis, coronary thrombosis, or malignant growths, appear resistant to treatment, or have involved, or are likely to involve, long periods of treatment or industrial inactivity, does not indicate permanence of total disability unless the end result of treatment is more likely than not to be total disability. The general rules regarding permanence, as applied to total disability ratings, are set forth in §§ 3.167 and 3.168. Employment as a member employee, or similar employment other than in Veterans' Administration centers obtainable only in competition with disabled individuals, will not be considered as evidence of employability.

§ 3.148 *Effective dates of evaluations, 1945 Schedule, in original ratings.* (a) The Schedule for Rating Disabilities, 1945 edition, is the only schedule applicable for the evaluation of disability on or after April 1, 1946, except when a statutory award or rating under the World War Veterans' Act, 1924, as amended, as restored by Public No. 141, 73d Congress, as amended, is in order, in which event the statutory award or rating will be continued or made in the manner provided for initial ratings. In initial ratings the effective dates of evaluations under the 1945 Schedule will be: (1) The dates following the date of discharge from active service or the date evidence shows entitlement, whichever is later, if the claim is filed within one year from the date of discharge, for periods both prior and subsequent to April 1, 1946; (2) The date of receipt of claim or the date evidence shows entitlement, whichever is later, if the claim was not filed within one year from date of discharge. Initial rating is defined as the first rating made in a case in which determination as to entitlement to disability compensation or pension for any disability under Public No. 2, 73d Congress, and the regulations issued pursuant thereto, as amended, has not heretofore been made. This definition includes those service-connected cases initially rated on or after April 1, 1946, either compensable or noncompensable, in which the 1945 Schedule was not applied.

(b) In other than initial ratings, all ratings as the result of the review required by the second sentence, section 1, Public Law 458, 79th Congress: Date following date of discharge, date evidence shows entitlement, or April 1, 1946, whichever is later, if claim was filed within one year from date of discharge from active service; ratings for periods prior to April 1, 1946, will be under the 1925 or 1933 Schedules; date of receipt of claim, date evidence shows entitlement, or April 1, 1946, whichever is later, if claim was not filed within one year from date of discharge; ratings for periods prior to April 1, 1946, will be under the 1925 and 1933 Schedules.

(c) The provisions of Public Law 458, 79th Congress, do not preclude change from a temporary rating in effect April 1, 1946, under the 1925 Schedule, to a permanent rating under the same schedule without change affecting the degree of disability.

(d) When service-connection, World War II, is granted under Veterans' Regulation 1 (a), part I, paragraph 1 (c) (38 U. S. C. ch. 12) the effective date of evaluation of disability will be determined as above outlined, except when claim is filed more than a year from date of discharge, the effective date of the evaluation of disability will be shown as of a date within the year from date of discharge. (60 Stat. 319, 38 U. S. C. 736–738)

§ 3.149 *Effective dates of evaluation, 1945 Schedules, in claims for increase.* (a) Evaluations under the 1945 Schedule and extensions in claims for increase will be effective from the date of the receipt of the evidence, i. e., affidavits of physicians or other evidence submitted by the veteran showing an additional disability, or an increase in the condition for which he is receiving compensation; or the date of the official report of physical examination made in a Veterans' Administration hospital, or by a designated examiner in connection with compensation, pension, or treatment pursuant to proper authority. The effective date of the evaluation will not, however, necessarily control award action. (See § 3.216)

(b) Increased ratings due solely to the application of the 1945 Schedule in the cases reviewed should be effective from April 1, 1946, if the case was initially rated prior to April 1, 1946; otherwise as provided in § 3.148 (a). (60 Stat. 319; 38 U. S. C. 736–738)

§ 3.150 *General principles as to effective disability evaluations under the Schedule for Rating Disabilities, 1945 Edition.* Within the limits mentioned in §§ 3.148 and 3.149, the question of evaluating disabilities based on applications for monetary benefits must be determined on the facts in the individual case for consideration. If the disability is static in nature and the information in connection therewith furnished in the Veterans' Administration Form 8–526 or in the service records (claim filed within one year from date of discharge) is sub-

stantiated by a subsequent examination, the precentage evaluations in accordance with the terms of the rating schedule will be applicable from the date of claim or date following date of discharge. Where the disease or injury is not static in nature but is disclosed on examination within such a reasonable time after the filing of the claim or date of discharge from service (claim filed within one year from date of discharge) that the exercise of sound medical judgment would permit a determination that the condition was existent at the time the claim was filed, or at the time of discharge, the effective date of the evaluations assigned in accordance with the terms of the rating schedule will be the date of claim or the date following the date of discharge. Accordingly, when in the exercise of sound medical judgment the evidence is considered sufficient to establish an evaluation of the disability from the date of application, original or for increase, or date of discharge from the service (claim filed within one year of discharge), an appropriate rating will be made and payments authorized effective from the date of application, or date of discharge, if otherwise in order. (Sec. 17, 57 Stat. 560; 38 U. S. C. 732)

§ 3.155 *Combined ratings.* (a) When there are two or more ratable disabilities, combined ratings, following the tables and rules prescribed in the 1945 Schedule, are authorized.

(b) Under Veterans' Regulation No. 1 (a), part IV (38 U. S. C. ch. 12), a combined rating under the 1945 Schedule is authorized as between ratings for one or more disabilities resulting from wartime service and ratings for one or more disabilities resulting from peacetime service.

(c) For the purpose of determining the existence of permanent and total disability under Veterans' Regulation No. 1 (a), Part III, evaluations for diseases or injuries service connected under Veterans' Regulation No. 1 (a), Parts I and II (38 U. S. C. ch. 12), may be combined with evaluations for diseases or injuries not shown to be connected with active military or naval service.

(d) Pursuant to section 202 (15), World War Veterans' Act, 1924, as amended, reenacted by Public No. 141, 73d Congress, a veteran of World War I, as defined by Public No. 141, 73d Congress, suffering from a disability of compensable degree connected with World War I service, who is entitled to compensation for a service-connected disability by reason of other military or naval service, is entitled to the evaluation and combination of his compensable service-connected disabilities in accordance with the Schedule for Rating Disabilities, 1945 edition, *Provided, however,* That in the absence of a change in the severity of the condition previously evaluated under the 1925 Schedule, these evaluations will be continued and the greater benefit awarded.

(e) The statutory allowance provided by section 202 (3) World War Veterans' Act, 1924, as amended, and reenacted by Public No. 141, 73d Congress, even though predicated upon a "no percent" rating under the 1925 Schedule of Disability Ratings, may be added to the compensation payable for disability incurred in World War II and paid as one award.

(f) Where there is doubt as to whether a veteran, who served during a war period and a peacetime enlistment, is entitled to combination and payment at wartime rates because of disabilities connected with peacetime service, or there is doubt as to the manner of combination, the case will be submitted to the Director, Claims Service, branch office, for review and appropriate advice.

§ 3.156 *Special combination ratings, 1945 Schedule.* Whenever a veteran is suffering from two or more separate permanent disabilities of such character as clearly to interfere with his normal employability, even though none of the disabilities may be of compensable degree under the 1945 Schedule, the rating agency is authorized to apply a ten percent rating, but not in combination with any other rating. In instances of this character where there is a service-connected wartime disability and also a service-connected peacetime disability, the evaluation will be made under 38 U. S. C. ch. 12, Reg. 1 (a), Parts I and IV.

§ 3.157 *Separate combined ratings, direct and presumptive.* Where the rating involves both direct and statutory presumptive service connections, under Title III, Public No. 141, 73d Congress, two combined ratings under the 1945 Schedule will be entered, one showing the evaluation of all directly service-connected diseases or injuries, and the other covering all directly and presumptively service-connected diseases or injuries.

§ 3.158 *Rating of noncompensable disabilities under 1945 Schedule.* For the purpose of the 1945 Schedule a disability under any diagnostic classification which does not meet the minimum Rating Schedule standard under that classification will be rated as no percent, except for purposes of Civil Service preference, in which event an evaluation of less than ten percent may be made. (60 Stat. 319; 38 U. S. C. 736–738)

§ 3.159 *Rating of disabilities aggravated by active service.* In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service, or is determined upon the evidence of record to have existed at that time. It is necessary, therefore, in all cases of this character to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the 1945 Schedule, except that if the disability is total (100 percent) no deduction will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the Schedule, no deduction will be made.

(b) Where a disease or injury incurred in peacetime service is aggravated during wartime service, or conversely, where a disease or injury incurred in wartime service is aggravated during peacetime service the entire disability flowing from the disease or injury will be considered incurred in war service and rated accordingly.

(c) The special monthly compensation or statutory allowances are payable whether the injury or disease basically was incurred in or aggravated by active service. (60 Stat. 319; 38 U. S. C. 736–738)

§ 3.165 *Statutory permanent and total ratings under the World War Veterans' Act, 1924, as amended, as reinstated by section 28, Public No. 141, 73d Congress.* Disability from an injury or disease will be rated as permanent total under the following conditions:

(a) *Statutory.* Statutory permanent total ratings are authorized by section 202, World War Veterans' Act, 1924, as amended, and as reinstated by section 28, Public No. 141, 73d Congress by reason of "Loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech or becoming permanently helpless or permanently bedridden." The organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, because of organic changes in the organs involved.

§ 3.166 *Total disability ratings under Public No. 2, 73d Congress, and the 1945 Schedule.* (a) Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation; *Provided,* That permanent total disability shall be taken to exist when the impairment is reasonably certain to continue throughout the life of the disabled person.

(b) The following will be considered to be permanent total disability: The permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or permanently bedridden.

(c) Other provisions relative to total disability ratings are contained in the 1945 Schedule.

(d) The authority granted the Administrator under Veterans' Regulation No. 1 (b) (38 U. S. C. ch. 12) for purposes of Part III, Veterans' Regulation No. 1 (a), to classify as permanent total those diseases and disorders, the nature and extent of which, in his judgment, will justify such a determination, will be exercised on proper submission under § 3.142.

(e) With actual progressive deterioration of the vision, so that the disabled person becomes blind in both eyes, or so nearly blind as to qualify under the 1945 Schedule a permanent and total rating will not be withheld, notwithstanding that the underlying diagnosis is a congenital defect, provided the other requirements for the benefit are met. It is to be borne in mind that the essential requirement in this regard is actual reduction of the vision, so that the person, formerly able to see well, or fairly well, has become, as a result of physical

changes, occupationally blind. (60 Stat. 319; 38 U. S. C. 736–738)

§ 3.167 *Permanent total disability ratings generally.* (a) Permanence of total disability may be conceded when it is reasonably certain that the disability will remain unimproved throughout the life of the disabled person, and with actually totally incapacitating diseases and injuries of long standing, when the probability of permanent improvement under treatment is remote.

(b) The age of the disabled person (over 55) may be considered in determining permanence. Permanent total disability ratings may not be granted as a result of any incapacity resulting from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations of permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. (38 U. S. C. ch. 12, Reg. 3 (a))

§ 3.168 *Ratings of total disability on history.* In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made under Public No. 2, 73d Congress, without regard to the rating schedule: *Provided* (a) That the disability must in the past have been of sufficient severity to warrant a total disability (b) that it must have required extended, continuous or intermittent hospitalization, or have produced total industrial incapacity for at least one year, or be subject to recurring, severe, frequent or prolonged exacerbations, and (c) that it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment, in determining whether the average person could have reestablished himself in a substantially gainful occupation.

§ 3.169 *Insurance and compensation or pension ratings.* A rating of permanent and total disability for insurance purposes will have no effect on ratings for compensation or pension.

§3.170 *Continuance of total disability ratings.* Total disability ratings made pursuant to the criteria established under the prior general and service pension laws, the War Risk Insurance Act, as amended, or the World War Veterans' Act, 1924, as amended, for pension, disability allowance, or disability compensation purposes, when warranted by the severity of the condition, and not granted purely because of hospitalization or home treatment, and total ratings made pursuant to existing legislation will not be reduced, in the absence of clear error, without physical examination showing material improvement in physical condition. Examination reports showing material improvement must be evaluated in conjunction with all the facts of record and consideration must be given particularly to whether the veteran attained improvement under the ordinary conditions of life, i. e., while actually at work, or whether the symptoms have been brought under control by prolonged rest, or generally, by following a regimen which precludes work, and if the latter, reduction from total disability rating will not be considered pending reexamination after a period of employment (three to six months).

§ 3.171 *Continuance of total disability ratings in tuberculosis cases.* Total ratings of long standing for active tuberculosis will not be reduced pending attainment of definite arrest, or at least the subsidence of any marked symptoms under the ordinary conditions of life, i. e., while employed. The fact of attaining inactivity or arrest following prolonged total disability on account of active tuberculosis will not in itself be taken as establishing that the improvement can be maintained under the ordinary conditions of life.

§ 3.172 *Stabilization of disability evaluations.* (a) The approved policy of the Veterans' Administration requires that all rating agencies handle cases affected by change of medical findings or diagnosis, wherein service connection or entitlement is in effect, including claims under Veterans' Regulation No. 1 (a), Part III (38 U. S. C. ch. 12), so as to produce the greatest degree of stability of disability evaluations consistent with the laws and regulations governing disability compensation and pension. In pursuance of this vital policy it is essential that the entire record of examinations and the medical-industrial history be reviewed to ascertain whether the recent examination is full and complete, including all special examinations indicated as a result of general examination and the entire case history. This applies especially to hospital examinations incident to treatment of intercurrent diseases and exacerbations, including bedside examinations, examinations by designated physicians, and examinations in the absence of, or without taking full advantage of, laboratory facilities and the cooperation of specialists in related lines. Examinations less full and complete than those on which payments were authorized or continued, will not be used as the basis of reduction. The type of disease, and the relationship between the former diagnosis and findings and the new diagnosis and findings must be closely examined. Ratings on account of diseases subject to temporary or episodic improvement, e. g., manic-depressive or other psychosis, epilepsy, psychoneurosis, coronary sclerosis (coronary occlusion or the anginal syndrome), bronchial asthma, gastric or duodenal ulcer, many skin diseases, etc., will not be reduced on any one examination except in those instances where all the evidence of record clearly warrants the conclusion that permanent improvement of physical or mental condition has been demonstrated. Ratings on account of diseases which become comparatively symptom free (findings absent) after prolonged rest, e. g., phlebitis, myocardial or coronary insufficiency, active pulmonary tuberculosis, etc., will not be reduced on examinations reflecting the results of bed rest. When the new diagnosis reflects mental deficiency or psychopathic inferiority only, the possibility of only temporary remission of the psychosis, psychoneurosis, or other superimposed disease will be borne in mind. When syphilis of the central nervous system or alcoholic deterioration are diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. With new diagnosis or findings reflecting change from organic etiology to functional etiology, as organic disease of the heart, to neurocirculatory asthenia, vaso-motor instability, or psychoneurosis, or as arthritis to psychoneurosis under similar circumstances, substantially the same degree of disabality may persist under the new diagnosis as under the old one. Even though material improvement in the physical or mental condition is clearly reflected, the rating agency will consider whether the evidence makes it reasonably certain that the improvement will be permanent and can be maintained under the ordinary conditions of life, i. e., while employed, or, if unemployed, while actively seeking employment. This instruction does not alter the long established policy of the Veterans' Administration of placing disability ratings on a permanent basis whenever existing conditions will permit.

(b) If, after according due consideration to all the evidence developed by the several items discussed in the preceeding paragraph, doubt remains, the rating agency will continue the rating in effect, citing the former diagnosis with the new diagnosis in parenthesis and following the appropriate code there will be added the reference "Rating continued pending reexamination _____ months from this date, § 3.172." The rating board will determine upon the basis of the facts in each individual case whether 18, 24 or 30 months will be allowed to elapse before the reexamination is made.

(c) The above provisions apply to permanent ratings, or to those which on account of their long continuance at the same level (five years or more) are on a parity with permanent ratings. Such provisions of regulations and procedure are not for application in the cases of veterans so recently discharged from the service that their disability has not been stabilized. Accordingly, in these new cases and particularly when temporary disability, which is likely to improve, is under consideration reexaminations disclosing improvement of the physical or mental condition will warrant reduction of the rating.

§ 3.173 *Determinations of incompetency or competency.* (a) Rating agencies are authorized to pass upon the mental condition and degree of disability of claimants in accordance with paragraph (B), section 1, Public Law 662, 79th Congress.

(b) The constituted rating agencies of the Veterans' Administration are au-

thorized to make official determinations, in accordance with approved rating form and practice, of incompetency and/or insanity of veterans, for the purpose of existing laws, regulations and official instructions relating to the payment of monetary benefits.

(c) In the exercise of this function rating agencies will make no determination of incompetency or insanity in any case without a definite expression regarding the question upon the part of the responsible medical authorities. The expression of medical opinion will be in accordance with the principles in § 3.174. The finding by two qualified specialists in neuropsychiatry will be required as a basis for the ratings relative to incompetency or insanity in all cases when the services of two qualified specialists are available; however, where an examination or opinion of two neuropsychiatrists cannot be conveniently or economically obtained, the opinion of one who is a specialist in neuropsychiatry, reported in the manner now provided, may be accepted as sufficient for such a rating determination, subject to the provisions of § 3.174. A finding and report as specified herein will be required where a beneficiary who has been rated insane or incompetent, reaches a state of improvement warranting consideration of the question of his recovery of reason or restoration of competency.

(d) In cases of incompetency where the insanity is not connected with service this fact must be brought out in the rating. Where the insanity is service connected, and a finding of incompetency is made, then this conclusion should be in consonance with the clinical picture of the type and degree of disability as presented in the symptomatology and there should be a consistent relation between the percentage of disability and the holding of "insane-incompetent."

(e) (1) In World War II cases the determination of the service department that a veteran is incompetent may be confirmed by the rating board only in the event the records show conclusively that the veteran is wholly incapable of disbursing the funds he is to receive from the Veterans' Administration in a reasonably prudent manner. In other words it must be clear that due to the utter lack of consideration of values or complete disregard of his own or his dependents' needs he would wantonly dissipate his funds. Where there is any doubt as to whether he is capable of administering his funds such doubt will be resolved in favor of his competency and an award will be made to him. However, where the veteran is maintained in a Veterans' Administration hospital or center, unless assured that the veteran has made a marked recovery since examination in the armed service, and that his release from the hospital or center may be anticipated in a relatively short time, and that he will be able to handle his funds as a competent patient while hospitalized, an opinion of incompetency would be justified and consistent with the purpose of hospitalization, and should be so expressed in the report of examination. The rating boards will bear in mind the consistency of a rating of incompetency of a hospitalized veteran with a mental disability evaluated as 100 percent.

(2) If the veteran upon discharge from the service is not admitted to a Veterans' Administration hospital or center or other institution for treatment of mental diseases, the case will be rated upon the records of the service department. If upon application of the rule stated in subparagraph (1) of this paragraph the rating agency concludes the veteran is incompetent he will be so rated and the case will be referred to the chief attorney as provided in paragraph 73a (1) (a) and (b) of M8–5 and § 14.200 of this chapter. The chief attorney will proceed to develop information as to the veteran's social, economic and industrial adjustment since discharge from the service, pursuant to Veterans' Administration medical procedures. Upon review of the evidence thus developed if the chief attorney concurs in the rating of incompetency he will proceed to effect the appointment of a fiduciary or, if the veteran is married, to recommend release of payments to the veteran's wife as provided in § 14.201 of this chapter. If the chief attorney determines that the veteran is sufficiently competent to administer the funds payable, the evidence will be referred to the rating agency with a statement as to his conclusion, the evidence will be reevaluated, the veteran will be rated competent and a rating commensurate with the degree of disability assigned. If upon review of the complete evidence it is found that the evaluation previously assigned may be confirmed during any given period the rating will reflect this fact and will also include an evaluation commensurate with the degree of disability from the date improvement is shown by the evidence. The award will be executed in accordance with the rerating. If, however, it is determined from a review of the evidence that the evaluation previously assigned may not be confirmed, the rerating will reflect an evaluation commensurate with the degree of disablement retroactively effective from the appropriate beginning date and the award executed accordingly. Reexaminations will not be routinely required in connection with the above described procedure, but may be called for if in the opinion of the rating agency such action is clearly necessary. In the case of a veteran suffering from mental disability who is being or has been discharged from a hospital subsequent to his release from service and is rated incompetent following the rule stated in subparagraph (1) of this paragraph the instructions contained in this section will be followed. The provisions of this paragraph are applicable to all veterans having mental disabilities.

§ 3.174 *Definition of insanity and incompetency.* For general purposes an insane person or lunatic may be defined as one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior, and who is thereby rendered incapable of managing his own affairs or transacting business with ordinary prudence; or who is dangerous to himself, to others, or to property; or who interferes with the peace of society; or who has so departed (become anti-social) from the accepted standards of the community to which by birth and education he belongs, as to lack the adaptability to make further adjustment to the social customs of the community in which he resides. (See Veterans' Administration medical procedures.)

§ 3.176 *Determination of need for nurse or attendant or regular aid and attendance under Public No. 141, 73d Congress, Reg. No. 1 (a), (38 U. S. C., ch. 12), Public No. 2, 73d Congress, and the laws reenacted by Public No. 269, 74th Congress as amended.* (a) The following will be accorded consideration in determining the need for nurse or attendant or regular aid and attendance; inability of claimant to dress or undress himself, or to keep himself ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of the claimant to feed himself through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical, or mental, of the claimant to protect himself from hazards or dangers incident to his daily environment. "Total blindness" as defined by the schedules, as well as "bedridden," will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice.

(b) Determinations that the veteran is so helpless, solely by reason of service-connected compensable diseases or injuries as to Public Nos. 2 and 141, 73d Congress, or without regard to service connection under the laws reenacted by Public No. 269, 74th Congress, as amended, as to be in need of a nurse or attendant or regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him to be in bed. They must be based on the actual requirement of personal assistance from others. If the claimant is able to be out of bed and can walk around entirely unassisted by others he cannot generally be regarded as meeting the requirements of the law and regulations; however, the other enumerated types of personal assistance must be considered.

(c) The above contemplates a person totally disabled and in need of a nurse or attendant, under the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, or regular aid and attendance, under Vet-

erans' Regulation No. 1 (a), as amended, (38 U. S. C. ch. 12), or the laws reenacted by Public No. 269, 74th Congress, as amended. The rates for regular aid and attendance in Veterans' Regulation No. 1 (a), as amended, or laws reenacted by Public No. 269, 74th Congress, as amended, are not to be added to any other rate provided therein.

§ 3.177 *When beneficiary is hospitalized at his own expense.* Where a beneficiary is hospitalized at his own expense in a private institution the same criteria will be necessary in determining the need for a nurse or attendant as would be required were he at his home and the hospitalization will not be considered as a fact indicating the existence of the need.

§ 3.178 *Family or relative may serve as nurse or attendant.* The performance of the necessary nursing or attendant's service by a relative of the beneficiary or other member of his household will not prevent the granting of the additional allowance.

Reexaminations

§ 3.184 *Claimants required to report when requested.* Every person applying for or in receipt of compensation or pension for disability shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a duly authorized medical examiner of the Veterans' Administration, including a period of observation in a hospital, if necessary. This will not be construed as in any way modifying the policy of assigning permanent ratings, whenever proper, under existing procedure. For failure to report, see §§ 3.251 and 3.266.

§ 3.185 *Reexaminations for Disability Rating Purposes.* (a) Reexaminations will be requested in cases in which it is indicated by evidence of record that there has been a material decrease in disability since the last examination, and in cases where there is evidence, pertinent to the individual case, that the disability is likely to improve materially in the future. The disability of a veteran, resulting from a tuberculous disease, will be rerated upon the basis of a physical reexamination held six weeks prior to the expiration of the six months period or the three years period of a temporary total rating granted under the conditions enumerated in sections 202 (2) and 202 (3) of the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress.

(b) Scheduled future examinations for compensation purposes in service-connected cases under Public No. 2, 73d Congress, or Public No. 141, 73d Congress, will not be requested following initial examination by the Veterans' Administration in static disability cases or when the lesions and symptoms have been shown to have persisted at approximately the same level by two examinations at least five years apart.

(c) (1) In World War II cases future requests for examination will be made, first, in "convalescent rating from date of discharge" cases under the revised, 1945, rating schedule, in six months; second, in cases rated fifty percent or more which are likely to improve, generally, in from one to two years; third, in all other cases, including static disabilities in from two to five years, depending on the percentage rating, the highest rated earliest. It is not intended that a second examination be authorized in a case involving only static disability, found to be such on the first examination by the Veterans' Administration. Examinations scheduled for future dates may be rescheduled earlier if the facilities permit. Second and later examinations by the Veterans' Administration, when required, will be scheduled, generally, in from one to five years, according to the likelihood of early improvement.

(2) Examinations for disability rating purposes should be as full and complete as possible under existing circumstances. They should always cover conditions rated "mm" or "nn" without prior examinations by the Veterans' Administration. They should include in all instances a brief medical and industrial history bringing the employment record up to date from date of discharge or date of last examination. Except in bedside examinations at the veteran's home, height, weight, general appearance, nutrition, muscular development, carriage, posture, and gait should be reported on at the time of each examination. Examiners should constantly bear in mind that they are communicating, on paper, the results of their examination to other physicians who will generally not see the veteran.

(3) Examinations in prisoner of war cases. Early examinations in prisoner of war cases should be given special attention. They will be requested "at once" whenever the records are considered inadequate for rating purposes, whenever the veteran complains regarding his initial rating, or whenever he complains regarding adequacy of an initial examination. Such "at once" examinations will be given priority over all others, except emergency cases. Neuropsychiatric examinations should never be omitted. The examiners should feel a special obligation to ascertain and report any causes of reduced efficiency whether or not expressible in formal diagnostic nomenclature. A common complaint is that although weight has been regained, weakness and fatigability continue. This should be reported on as accurately as possible. Retinitis is not uncommon following malnutrition. With history of intestinal disease, or unexplained underweight condition, tests for intestinal parasites should be routine. The existence of any chronic disease which may be associated with the circumstances of imprisonment should be carefully checked and reported on.

(4) Examinations in psychoneurosis cases. In these cases the examiner should record the veteran's complaints and subjective symptoms separately from the examiner's objective findings, observations and analysis of the case. A study of the longitudinal view of the case should be made. The examiner should note any change in behavior pattern attributable to the disease, or their absence, and report on these or their absence. In any case where it has been established that the veteran suffered from a psychoneurosis of combat origin, a change of diagnosis to one reflecting psychopathic personality should not be proposed without full consideration of the veteran's combat experience and effects thereof. Where any veteran with combat experience has manifested symptomatology initially classified as "combat fatigue," "exhaustion," or under any other of a number of special terms, a subsequent reclassification as psychopathic personality should not be made or continued without the same full consideration. By proper direction of his questions, as to time and circumstances of onset, the examiner should ensure that these become a part of the report of examination. In making an examination the examiner should familiarize himself with all earlier diagnosis in the case and assure himself that changes are fully explained and justified. The examiner should endeavor as far as possible to return a correct diagnosis on initial examination by the Veterans' Administration, as well as on subsequent examinations. Particular care is necessary when there are combinations of symptoms in part referable to organic diseases and in part referable to psychoneurotic reactions. Conference of examiners is usually advisable under these circumstances to determine whether one diagnosis may cover all the symptoms or for the allocation of the symptoms to the separate diagnosis.

(d) In nonservice-connected cases under Part III, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), wherein a permanent total rating may be in effect, or be hereafter granted, based on other than obviously static disabilities, reexamination will be conducted within thirty months of the date the permanent total rating was first granted. Further examination will not be requested routinely and will only be accomplished if considered necessary based upon the particular facts of the individual case. In cases in which the permanent total disability is confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not be requested.

§ 3.186 *Reexaminations in claims for increased pension or compensation.* Where a claim is filed for increased pension or compensation, a reexamination may be authorized only when the claim is supported by competent evidence indicating that an increased rating may be warranted by reason of an increase in disability or the reasonable probability thereof. (38 U. S. C. ch. 12, Reg. 1 series.)

§ 3.189 *Rating of change in diagnosis of diagnostic center.* (a) Where the findings of a field station of the Veterans' Administration differ from the findings of a diagnostic center as to degree in severity of condition within one year from the date of the diagnostic center findings, the rating agency of original or appellate jurisdiction will reconcile such difference with the diagnostic center in accordance with Veterans' Administration medical procedures. However, upon physical reexamination after lapse of the one-year period indicated the rating agency is authorized to rate a case, without such reconciliation, on the degree of severity shown under the 1945 Rating Schedule and regulations.

(b) The rating agency of original or appellate jurisdiction is not authorized to accept at any time for rating purposes the findings of a field office differing with the prior findings of a diagnostic center with respect to the etiology or differential diagnosis of a disability without reconciliation of such difference with the diagnostic center under Veterans' Administration medical procedures.

DISALLOWANCE AND AWARDS

§ 3.200 *Disallowance of claims.* (a) When, upon review by the authorization unit, it is determined that there exists a statutory or regulatory bar to entitlement, the claim will be disallowed; otherwise no claim for disability compensation or pension will be disallowed prior to consideration by the rating board and the assignment of an appropriate rating. In every instance where a disallowance is effected, the veteran or his duly authorized representative will be informed of the action taken.

(b) Where an application for benefits is based upon the same conditions for which a claim was formerly disallowed and new and material evidence is not submitted, the veteran will be informed that in view of the determination previously made, it will be necessary to deny the claim in the absence of changes in the law or regulations.

§ 3.201 *Adjudication of claims involving compensation or pension based upon new and material evidence presented after prior disallowance.* (a) New and material evidence, relating to the same factual basis (such as, in the case of a living veteran, the same disease or injury) as that of the disallowed claim, submitted subsequent to the final disallowance of the claim, will constitute a new claim and have all the attributes thereof: *Provided,* That the evidence or the accompanying communication meets the requirements as to what shall constitute an informal claim under § 3.27 and will be handled as follows:

(b) Where the benefits claimed were denied previously by an adjudicating agency of original jurisdiction and where no appeal to the Board of Veterans' Appeals has been filed within the period provided for appeal, or where the benefits claimed were denied previously by a decision of the Board of Veterans' Appeals, the claims folder together with the evidence will be referred to the appropriate adjudicating agency of original jurisdiction which will determine whether the evidence is new and material and, if determined to be so, will proceed with adjudication upon the basis of all the evidence.

(c) For the purpose of this paragraph a formal application will not be required, but where informative data comprehended in the questions enumerated in the appropriate application form are considered essential to further adjudicative action in the claim, the informative data will be required.

(d) Awards pursuant to claims comprehended under paragraphs (a), (b) and (c) of this section will be governed by the provisions of the Veterans' Regulation No. 2 series (38 U. S. C. ch. 12), effective laws, and § 3.212 relating to the effective dates of awards based upon original claims.

(e) Decisions of adjudicating agencies of original jurisdiction do not become final until the expiration of the time within which an appeal may be filed. Accordingly, evidence received prior to the expiration of the appeal period will be considered by the adjudicating agency of original jurisdiction and an appropriate determination made.

(f) Where the new and material evidence consists of a supplemental report from the service department and it is received subsequent to the expiration of the appeal period or, in the event of an appeal, subsequent to the decision of the Board of Veterans' Appeals, the supplemental report from the service department will be considered under Veterans' Regulation No. 2 (d) (38 U. S. C. ch. 12), the appropriate rating and award accomplished under the applicable instructions and if in the opinion of the rating board, the evidence warrants the payment of retroactive benefits the claims folder will be forwarded accompanied by a recommendation, in field cases, to the Director, Claims Service, branch office, and in central office cases, to the Director, Veterans' Claims Service, or the Director, Dependents and Beneficiaries Claims Service, for determination of the retroactive feature pursuant to Veterans' Regulation No. 2 (c). The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of new evidence from a service department must be adequately supported by medical evidence and where the additional records received from the service department clearly support the assignment of a specific rating over a part or the entire period of time involved a retroactive evaluation will be assigned accordingly except as it may be affected by the filing date of the original claim. Decisions made by the officials to whom authority is herein given to make determinations under Veterans' Regulation No. 2 (c) (38 U. S. C. ch. 12), are subject to appeal to the Board of Veterans' Appeals. (Sec. 9, 48 Stat. 10; 38 U. S. C. 709)

§ 3.205 *What constitutes new and material evidence.* Evidence which is solely cumulative or repetitious in character will not serve as the basis for reconsideration of the previous decision. When evidence relates to the same specific fact to which proof was before adduced of a like character it is cumulative but not when it relates to a new fact respecting the general question or point in issue. To constitute material evidence the facts offered must relate and go to the issue, or have a legitimate and effective influence or bearing on the decision in question.

§ 3.212 *Effective dates of awards of disability compensation.* (a) Initial awards of disability compensation will be payable in accordance with the provisions of Veterans' Regulation No. 2 (a), Part I, paragraph I, (38 U. S. C. ch. 12) as amended by section 17, Public Law No. 144, 78th Congress, provided an appropriate claim therefor has been filed and, if incomplete, the necessary evidence to complete such claim is submitted within one year from the date of request therefor.

(b) Where, upon reconsideration by a rating agency of original jurisdiction in accordance with § 3.201, a favorable decision is rendered the effective date of an award for monetary benefits will be the date of receipt by the Veterans' Administration of the application for reconsideration, or the date of receipt of the evidence which establishes entitlement, whichever is the later.

(c) The effective dates of awards of disability compensation will coincide with the effective dates of evaluations as set forth in § 3.148 (a) and (b). (Sec. 1, 48 Stat. 8, sec. 17, 57 Stat. 560; 38 U. S. C. 701, 732)

§ 3.213 *Effective dates of awards pursuant of Part III, Reg. No. 1 (c) (38 U. S. C. ch. 12).* Awards pursuant to Part III, Veterans' Regulation No. 1 (c), will be effective as of the date of the receipt of a claim or the date upon which permanent total disability arose, whichever is the later. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.214 *Effective dates of awards of increased disability compensation.* The effective date of an award of increased disability compensation will be in accordance with the provisions of paragraph II, Part I, Veterans' Regulation No. 2 (a) (38 U. S. C. ch 12).

(a) *By reason of dependents.* Increased disability compensation payable by reason of dependents under title III, Public No. 141, 73d Congress, will be effective as of the date of the receipt of the claim or the date of receipt of the evidence which establishes entitlement, whichever is the later, subject to the provisions of § 3.255 (c) in cases of institutionalization. The evidence necessary to complete the application for dependency allowance must be submitted within 1 year from the date of request for such evidence; otherwise the allowance for the dependents may not be paid by virtue of that application.

(b) *By reason of regulatory or schedular provisions.* (1) The effective date of increased compensation due to the promulgation of the 1945 schedule is controlled by § 3.149.

(2) The effective date of an award, original, increased or reopened, resulting from an amendment of the 1945 schedule or the promulgation of an administration issue, will be the date of receipt of the claim, original, increased or reopened, but in no event prior to the date of the amendment or administration issue; *Provided,* That if the amendment or issue is applied on the initiative of the administration the effective date will be the date of administrative determination. The date of administrative determination is the date the rating sheet is signed. Except in unusual cases, the rating sheets will be typed and signed the same day the work sheet is prepared by the rating board.

(c) *Where the basic right to entitlement has been barred.* Retroactive increases or additional benefits will not be awarded after the basic right to entitlement has been barred, such as by reason of forfeiture or severance of service con-

nection. (Sec. 9, 48 Stat. 10; 38 U. S. C. 709)

§ 3.216 *Application for increase based upon changed physical condition.* A formal application for increased disability compensation or pension will not be required, and an informal application or request when accompanied by evidence of a changed physical condition will suffice.

(a) *Increase based upon report of physical examination.* Where an increase in disability is shown by an official report of physical examination made by a full-time, part-time, or designated physician of the Veterans' Administration in connection with compensation, pension, or treatment pursuant to proper authority, the report of physical examination will be accepted as a claim and payment of the increase may be made effective as of the date of examination. This principle likewise is for application to claims under Veterans' Regulation No. 1 (a), Part III, paragraph I (a) (38 U. S. C. ch. 12).

(b) *Statement by private physician.* A statement by a private physician showing increased disability submitted by or on behalf of a veteran for the purpose of obtaining increased benefits may be accepted as an informal claim and payments awarded from the date of receipt of the evidence, if otherwise in order, provided that the findings contained therein are subsequently verified by an official Veterans' Administration examination.

(c) *Physical examination reports, clinical records and transcripts of records received from state, county, municipal and recognized private institutions and contract hospitals.* Generally, physical examination reports, clinical records and transcripts of records from State, county, municipal, and recognized private institutions and contract hospitals relative to veterans undergoing treatment or domiciled therein, whether by the Veterans' Administration or otherwise, will be accorded the same consideration for the purpose of rating claims for compensation or pension as though the records were received from a Veterans' Administration field station. These records, however, must present the essentials upon which ratings are to be founded, that is, the disabling conditions must be adequately identified; sufficient findings must be reported to permit proper evaluation of the condition, and they must be certified by chief medical officers or their physician designates. As to private institutions, the hospitals listed in the hospital number of "The Journal" of the American Medical Association (usually published in April of each year) and followed by the symbol consisting of a shaded triangle are recognized. This symbol indicates that the hospital has been approved by the American College of Surgeons as meeting unconditionally its minimum requirements for general standardization. If the name of the private hospital at which the veteran was examined or treated does not appear on the approved list, the chief medical officer or his physician designate will be requested to advise whether the hospital meets the minimum requirements for the care and treatment of Veterans' Administration patients and for hospital facilities as prescribed in current directives of the department of medicine and surgery. Depending upon the advice of the chief medical officer or his physician designate, the report will be accepted or corroborative examination by the Veterans' Administration requested. It is to be understood that such records, in those instances where maintenance is not at the expense of the Veterans' Administration, should not be accepted as claims for increase if they are routinely submitted, but only where there is an indication that they are being submitted for the purpose of claiming increased benefits. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704)

§ 3.217 *Right of election of benefits payable.* Where a claimant has a right to benefits under both Public No. 2, 73d Congress, and Public No. 141, 73d Congress, he may elect to take under either law, regardless of whether it is the greater or lesser benefit and even though the election results in reducing the benefits payable to his dependents. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704)

§ 3.218 *Award where identical amounts are involved.* In order to avoid unnecessary awards action where the monetary benefits under existing legislation are the same in the amounts payable, the monetary benefit previously awarded will be continued. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704)

§ 3.225 *Computation of awards predicated upon ratings involving both direct and statutory presumptive service-connection.* (a) Awards based upon the evaluation of disabilities all of which are directly service-connected by way of aggravation or incurrence in active military or naval service only, will be for the full amount payable under the rating. Awards predicated upon the evaluation of disabilities all of which are service-connected by statutory presumption only under section 27, Public No. 141, 73d Congress, will be for the amount of 75 percent of the compensation which otherwise would be payable under the rating. Awards predicated upon ratings involving both direct and statutory presumptive service-connected diseases or injuries will be computed as follows: The amount of compensation payable in accordance with the Schedule of Disability Ratings, 1945, and Extensions thereto, will be determined for the directly service-connected diseases or injuries, and three-fourths of the difference between this amount and the amount otherwise payable for all diseases or injuries service-connected directly or by statutory presumption will be added to the amount payable for the directly service-connected diseases or injuries. This sum will be the monthly payment to be awarded.

(b) A $60 award on account of nurse or attendant will be assumed to be predicated on the major (i. e., highest rated) disability or statutory combination, and the amount to be paid will depend on the service-connection status of the disability.

(c) When the statutory award of $60 on account of arrested tuberculosis is predicated upon service-connection by statutory presumption, the minimum award will be $45 per month. This award does not enter into combination ratings or awards.

(d) The statutory award of $30 per month (section 202 (3), World War Veterans' Act, 1924, as amended) does not apply to disabilities which are service-connected by statutory presumption.

§ 3.228 *Computation of annual income for the purposes of Veterans Regulation 1 (a), Part III (38 U. S. C. ch. 12), or section 1 (c) of Public No. 198, 76th Congress (Act of July 19, 1939), as amended by section 11, Public Law 144, 78th Congress*—(a) *Basic rule.* Annual income will be computed on the basis of the total income for the entire calendar year. Where the equities indicate, however, such annual income may be computed monthly or proportionately on the basis of the rate of income. Under any method of calculation, the question is whether the actual income exceeds the statutory income limitation.

(b) *Benefits excluded from computation.* In determining annual income, benefits received from the following sources will not be considered:

(1) Any payments by the United States Government because of disability or death under laws administered by the Veterans' Administration.

(2) Mustering-out pay.

(3) The 6-months' death gratuity.

(4) For the purposes of paragraph II (a), Part III, of Veterans' Regulation 1 (a), as amended, overtime compensation or additional compensation to Government employees under Public Law 49, 78th Congress, or amounts payable under Public Laws 106 and 390, 79th Congress, other than increases in basic rates of compensation, which the act expressly provides, shall be considered a part of basic compensation. For the purposes of section 11, Public Law 144, 78th Congress, this compensation is not excluded from computation of annual income.

(c) *Income included in computation.* In determining annual income, payments and benefits received from the following sources will be considered:

(1) Total income from sources such as wages, salaries, bonuses (except World War adjusted compensation), earnings, emoluments, investments or rents from whatever source derived, or income from a business or profession.

(i) Salary is not determined by the amount the employee actually receives in cash but includes deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws. The value of salary received in kind (including a fair value for maintenance) also constitutes income.

(ii) In computing income from a business or profession, the gross income may be reduced by the necessary expenses of carrying on the same, such as cost of goods sold or expenditures for rent, repairs, taxes, upkeep, and other operating expenses.

(2) Family allowances authorized by service personnel under Public Law 625, 79th Congress.

(3) Subsistence allowance under title II, Public Law 346, 78th Congress.

(4) Commercial insurance consisting of lump sum or installments of life, disability, accident, health, or similar insurance. (See paragraph (f) of this section.)

(5) Compensation paid by the Bureau of Employees' Compensation, Federal Security Agency, or a State compensation or industrial board or commission.

(6) Civil service retirement benefits, Federal Old Age and Survivors' Insurance, or railroad retirement benefits: *Provided,* That where the benefit is received by a former worker based on his own employment, no part of such payments will be considered "annual income" until the full amount of his personal contribution (as distinguished from amounts contributed by the employer and not by the worker) has been received by him: *And provided further,* That such benefits received by a widow on the basis of her husband's employment will be considered as annual income as received.

(7) Social security benefits (Federal Old Age and Survivors' Insurance benefits are subject to the proviso contained in subparagraph (6) of this paragraph).

(8) Gifts.

(9) Proceeds of bequests and inheritances received in the settlement of estates: *Provided,* That property received by inheritance or otherwise will not be considered as "annual income" until such property, or other property acquired in lieu thereof, by exchange or barter, has been converted into cash.

(10) Charitable donations from any source.

(d) *Proportionate computations.* Income will be computed on a proportionate basis where:

(1) The income of the claimant exceeds $1,000 (or $2,500, whichever is applicable).

(i) In the claim of a veteran, from the date he became permanently and totally disabled.

(ii) In the claim of a widow, from the date of the veteran's death.

(2) The income of the veteran or widow exceeds $1,000 but is not in excess of $2,500.

(i) From the date the status of a veteran changes in the course of a calendar year from that of a married person (or a person with a minor child or children) to that of an unmarried person (or a person without a minor child or children).

(ii) From the date the status of a widow changes in the course of a calendar year from that of a widow with a child so that she becomes a widow without a child.

(iii) From the date the status of a widow changes in the course of a calendar year from that of a widow without a child so that she becomes a widow with a child. (Where the change of status arises incident to the birth of a posthumous child, the widow will be considered as a widow without a child for the period prior to the date of the child's birth.)

(iv) In determining entitlement under the circumstances outlined in the preceding subparagraphs, the proportionate computations will be applied to each period separately and will not be combined to afford an aggregate applicable to the entire calendar year. The amount of income received within each separate period will determine entitlement to pension for that period.

(e) *Total income considered.* Except as provided in paragraphs (d) (1) (i) and (d) (2) (iii) of this section, where pension is payable from the date of filing claim, the claimant's income will not be determined on a proportionate basis, but the income for the full calendar year will be considered.

(f) *Commercial insurance* — (1) *Received by purchaser.* Where an annuity or payment of endowment insurance is received by the purchaser, no part of the payments received will be considered annual income until the full amount of the consideration has been received, after which the full amount of such payments will be considered income.

(2) *Received by beneficiary.* (i) Where the beneficiary received commercial life insurance in a lump sum or had the right to elect settlement in a lump sum, the insurance will be considered to have been received in a lump sum in the calendar year in which the veteran died.

(ii) Where insurance is received by a beneficiary in the manner specified by an option elected by the insured, other than in a lump sum, it will be considered income for the calendar year in which the money is actually received.

(3) *Interest on life insurance.* Where it is considered that life insurance has been received in a lump sum in the calendar year in which the veteran died and payments are actually received in some other manner, no part of the payments received in succeeding years will be considered income until an amount equal to the lump-sum face value of the policy has been received, after which the full amount of such payments will be considered income.

(g) *Income received in installments.* (1) Where income is being received at a rate which indicates that the total income for the entire calendar year will not exceed the statutory income limitation, the claim may be allowed.

(2) Where income is being received at a proportionate rate which indicates that the total income for the entire calendar year will exceed the statutory limitation, the claim will be disallowed: *Provided,* That where such rate will not be received for the entire 12 months (as, for example, in the case of a school teacher paid for 9 months of the year) and the total amount received will not exceed the statutory limitation, the claim may be allowed.

(h) *Deferred determinations.* Where there is doubt as to whether the anticipated income will exceed the statutory limitation, payment of pension will not be made before the end of the calendar year, when the total income received during such year may be determined. Where a determination as to entitlement is deferred in accordance with this subparagraph, pension may be payable from the first of that calendar year if notice that the claimant's income did not exceed the statutory limitation is received at any time within the succeeding calendar year. Any necessary evidence must be received in the Veterans' Administration within 1 year after the date of request. If notice is not received within the period prescribed, payments may not be made for any period prior to the date of receipt of a new claim (formal or informal).

(i) *Reduction of income.* Where a claim has been disallowed or payments discontinued because the claimant's annual income is in excess of the statutory limitation, pension may be payable from the first of the succeeding calendar year if notice is received during that year that the claimant's actual or anticipated income will not exceed $1,000 (or $2,500, whichever is applicable) and the necessary evidence is furnished within 1 year after the date of request; otherwise, pension may not be paid for any period prior to the date of receipt of a new claim (formal or informal).

(j) *Community property laws.* In determining the income of a veteran, the community property laws of the several States are not for application. (Secs. 1, 4, 48 Stat. 8, 9, 59 Stat. 295, 60 Stat. 216; 5 U. S. C. 901, 902 note, 38 U. S. C. 701, 704)

§ 3.232 *Section 202 (15), World War Veterans' Act, 1924, as amended, reenacted by Public No. 141, 73d Congress. (See § 3.155 (d).)*

(a) Awards will be computed in accordance with § 3.225. For the purposes of this computation, peacetime disabilities combined with wartime disabilities will be considered as directly service-connected wartime.

(b) Section 3.155 (d) will not be construed as denying the veteran the greater benefit to which he may be entitled by reason of disabilities not connected with service.

§ 3.235 *Statutory awards, section 202, World War Veterans' Act. 1924, as amended, as re-enacted by Public No. 141, 73d Congress.* The statutory awards provided in section 202 of the World War Veterans' Act, 1924, as amended, are payable under section 27 or 28, title III, Public No. 141, 73d Congress, as follows:

(a) Under section 202 (2), compensation under a rating of temporary total disability for a period of 6 months following discharge from a hospital after treatment therein for a period of 1 year for a tubercular disease of a compensable degree and after a condition of complete arrest thereof has been reached.

(b) Under section 202 (3):

(1) First paragraph, the statutory rates for specfied conditions as provided therein.

(2) Second paragraph, compensation under a temporary total rating for a period of 3 years following discharge from a hospital after treatment therein for a tuberculous disease of a compensable degree for a period of 1 year and after it has been determined that a condition of arrest will not be reached by further hospitalization.

(3) Third paragraph, the additional compensation of $30 monthly for the loss of the use of a creative organ or the additional compensation of $42 monthly for the loss of the use of one or more feet or hands, independent of any other compensation (Pub. No. 866, 76th Cong., and Pub. L. 662, 79th Cong.).

(c) Under section 202 (5), an allowance not exceeding $60 per month for a nurse or attendant.

(d) Under section 202 (7), an award of not less than $60 per month to a person shown to have had an active tuberculous disease of a compensable degree which has reached a condition of complete arrest; and compensation under the minimum rating of 25 percent for arrested or apparently cured tuberculosis.

(e) Where any of the statutory allowances are predicated upon diseases or injuries service connected by statutory presumption the monthly amounts will be determined in accordance with the provisions of § 3.225. (Secs. 27, 28, 48 Stat. 524, sec. 6, 54 Stat. 1196, sec. 2, 60 Stat. 910; 38 U. S. C. 471a, 471a–3, 473, 722)

§ 3.236 *Special monthly compensation specified by or fixed pursuant to paragraph II, Parts I and II, Veterans Regulation 1 (a), (38 U. S. C. ch. 12), as amended by Public Laws 182, 659, and 662, 79th Congress.* (a) Special monthly compensation provided by subparagraph (k), Parts I and II, Veterans' Regulation 1 (a), as amended, is applicable but once in any one case, when payable in addition to the compensation provided in paragraph II, Parts I and II, subparagraphs (a) to (j). In other words, if the veteran has suffered the anatomical loss of one eye and one hand, his monthly compensation under Public No. 2, 73d Congress, as amended, will be increased by $42 and not by $84 or by $31.50 and not by $63, if the disabilities were incurrred in wartime service or peacetime service, respectively. The additional allowance may be based upon an anatomical loss or loss of use included in the requirements for the basic rate. The additional allowances under subparagraph (k) are now payable in addition to compensation payable under subparagraphs (l) to (n) and such additional allowance is payable for each anatomical loss, loss of use, or blindness of one eye having only light perception, when existing in addition to the requirements for these basic rates, provided the total does not exceed $360 in part I cases or $270 in part II cases. For example, a war veteran who has suffered the loss of use of both hands, one foot, and one eye (light perception only) will be compensated at $240 plus two allowances of $42 each or $324 under the second part of subparagraph (k).

(b) *Helplessness.* (1) The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as transverse myelitis with loss of use of both legs and loss of anal and bladder sphincter control; also the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(2) The rate of $282 provided under subparagraph (m) on account of helplessness requiring regular aid and attendance applies only in cases entitled on acount of blindness of both eyes. A veteran having suffered the loss, or loss of use, of both hands, feet, or one hand and one foot, and having no other compensable disability will be rated according to the level of amputation or loss of use; entitlement to a higher rate on account of helplessness requiring regular aid and attendance must be based on such need resulting from pathology other than the anatomical loss or loss of use of two extremities; when so based, i. e., upon pathology other than the anatomical loss or loss of use of two extremities, the rate will uniformly be $360 (or $270) monthly.

(c) *Intermediate rates fixed pursuant to law.* The authority contained in subparagraph (p) to allow the next higher rate or an intermediate rate will be administered as follows:

(1) With the anatomical loss, or loss of use, of one hand or one foot, and anatomical loss, or loss of use, of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place, the rate will be $261 (or $195.75).

(2) With the anatomical loss, or loss of use, of one extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place, and the anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance, the rate will be $300 (or $225).

(3) With the anatomical loss, or loss of use, of one hand or one foot, and the anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance, the rate will be $282 (or $211.50).

(4) With the requirements for any of the rates provided in subparagraphs (l) to (n), inclusive of Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), and additional disability independently ratable at 50 percent or more, the rate will be intermediate, i. e., half-way, between the rate authorized for the subparagraph whose requirements are met, and the next higher rate authorized in subparagraphs (m) to (o).

(5) With the requirements for any of the rates provided in subparagraphs (l) to (n), inclusive, and additional disability independently ratable, apart from any consideration of individual unemployability, at 100 percent, the rate will be the next higher rate authorized in subparagraphs (m) to (o).

(6) Other cases in which any of the rates are deemed inadequate will be handled in accordance with § 3.142.

(d) *Ratings for specific conditions—(1) Rating of binocular blindness of different degrees.* (i) With blindness of one eye with 5/200 visual acuity or less, and blindness of the other eye having only light perception, the rate will be $261 (or $195.75).

(ii) With blindness of one eye having only light perception, and anatomical loss, or blindness, having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement, of the other eye, the rate will be $300 (or $225).

(iii) With blindness of one eye having 5/200 visual acuity or less, and anatomical loss, or blindness, having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement, of the other eye, the rate will be $282 (or $211.50).

(2) *Rating of blindness of both eyes having no light perception.* The rate under subparagraphs (n), $318 (or $238.50) per month, will be assigned when there is a total blindness of both eyes having no light perception accompanied by phthisis bulbi, evisceration or other obvious deformity or disfigurement.

(3) *Entitlement under subparagraphs (o) of Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12).* Entitlement to the maximum rate of $360 (or $270) per month on account of entitlement to two of the rates provided in one or more of subparagraphs (l) to (n), inclusive, must be based upon separate and distinct disabilities so entitling.

If the loss, or loss of use of two extremities or being permanently bedridden renders the person helpless, increase to $360 (or $270) per month is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use of two extremities, or blindness, be taken as entitling to $360 (or $270) per month. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss or loss of use of both hands and of both feet result from a common etiological agent, for example, one injury, or rheumatoid arthritis, will not preclude entitlement to the maximum rate. (Sec. 1, 48 Stat. 8, sec. 6, 53 Stat. 1070, 59 Stat. 533, sec. 2, 60 Stat. 904, 910; 38 U. S. C. 471a–3, 701, ch. 12 note)

§ 3.237 (a) *Additional allowance for nurse or attendant.* If and while a veteran is so helpless on account of a service-connected compensable condition as to be in need of a nurse or attendant (see §§ 3.176, 3.177, and 3.178), there will be allowed in addition to the compensation payable under Title III, Public No. 141, 73d Congress, the sum of $50 per month on and after March 28, 1934, or $60 per month on or after September 1, 1946, or an increased statutory rate under Public No. 2, 73d Congress, as amended.

(b) *Reductions during hospitalization.* Where a veteran in receipt of additional or increased compensation based upon the need for a nurse or attendant, regular aid or attendance, or frequent and periodical aid or attendance, other than on account of transverse myelitis or paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, as a result of severe traumatic lesions of the spinal cord, is being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration and is being furnished with nursing or attendant's service, the award of compensation will be the amount authorized by the rating decision exclusive of any additional or increased amount on account of the need for a nurse or attendant, regular aid and attendance, or frequent and periodical aid and attendance. In the excepted case a uniform rate of $360 (or $270) per month will be maintained, without de-

duction on account of being furnished aid and attendance in kind. Due to the different additional amount to which veterans may be entitled under Public Law 182, 79th Congress, as amended, on account of helplessness requiring regular aid and attendance, and consequent different amounts of reductions when being furnished regular aid and attendance in kind, when institutionalized by the Veterans' Administration, married, and having dependents, it is necessary to give careful attention to the exact basis of entitlement:

(1) The general rule as to reductions of special monthly compensation of $240 (or $180) per month or more based upon the need for regular aid and attendance when the veteran, married or having dependents, is being furnished nursing or attendant's service while receiving hospital treatment, institutional or domiciliary care by the Veterans' Administration is that reduction will be in the additional amount based upon the need for regular aid or attendance.

(2) In determining the rate of special monthly compensation first consideration will be given to anatomical loss or losses of use of extremities, blindness, having 5/200 visual acuity or less, anatomical loss of both eyes, or being permanently bedridden, and if, based on these considerations, there is entitlement to one of the rates under subparagraphs (l), (m), or (n), of Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12) or to two of these rates entitling under subparagraphs (o), no reduction is in order on account of being furnished nursing or attendant's service. If there is such entitlement based on these enumerated conditions, it is immaterial whether the veteran is also so helpless as to be in need of regular aid and attendance, and no reduction is in order on this account.

(3) It is only when entitlement to the rate under subparagraphs (l) singly, or with another entitlement to the rate under subparagraphs (l), (m), or (n), so as to qualify under (o), is based solely upon being so helpless as to be in need of regular aid and attendance, i. e., in the absence of other entitling conditions, that reduction on this account is in order.

(4) The reduction in the case of a veteran entitled only under subparagraphs (l) on account of helplessness will be in the amount of $102 (or $76.50).

(5) When any veteran is entitled to one of the rates under subparagraphs (l), (m) or (n) by reason of anatomical losses or losses of use of extremities, blindness, having 5/200 visual acuity or less, or anatomical loss of both eyes, and is also entitled to another rate under subparagraphs (l) on account of being so helpless as to be in need of regular aid and attendance, no condition being considered twice in the determination, the rate of pension while not being maintained and furnished aid and attendance in kind will be $360 (or $270) per month. This amount is subject to reduction to $282 (or $211.50) or $318 (or $238.50) per month according to which the veteran is entitled apart from helplessness. No case will arise in which reduction from $360 to $240 will be in order, for the reason that the condition entitling to the second rate on account of rendering the person helpless will necessarily be totally disabling, thus entitling, if the basis entitlement is under subparagraphs (l) or (m), to one of the rates specified in the preceding sentence. Note that if the basic entitlement is under subparagraphs (n) the additional disability rendering the person helpless is necessarily ratable at 100 percent; consequently the rate of pension will be $360 (or $270) per month whether or not being furnished aid and attendance in kind.

(6) In the special case of entitlement under subparagraphs (m) only on account of blindness of both eyes, rendering him so helpless as to be in need of regular aid and attendance, the reduction will be $42 (or $31.50) per month.

(7) Additional pension of $42 (or $31.50) per month under subparagraphs (k), or on account of 50 percent disability or 100 percent disability in excess of the conditions entitling under subparagraphs (l), (m), or (n) is not subject to reduction on account of being furnished nursing or attendant's service.

The reduced rate of compensation in such instances will be effective as of the beginning of the maintenance of the disabled veteran in an institution by the Veterans' Administration. The compensation in all cases contemplated herein is subject to the limitations contained in § 3.255.

(c) *Resumption of full rate.* In every case where a beneficiary who is receiving an allowance or increased compensation for a nurse or attendant is admitted to a hospital for treatment as a beneficiary of the Veterans' Administration, a report will be forwarded to the rating board, field office, or the central disability board, claims division, veterans claims service, showing the inclusive date of hospital treatment. Where the additional allowance or increased compensation for a nurse or attendant has been properly authorized to patients with amputations, or in those cases wherein the basic condition requiring a nurse or attendant is essentially permanent as defined in § 3.162, or in terminal cases, a redetermination by the rating board following dehospitalization is not required for reinstatement of this benefit. Upon receipt of the necessary notice that such veteran is no longer being maintained in an institution by the Veterans' Administration, appropriate awards action for the purpose stated above will be accomplished at once and in such instances it will not be necessary to await receipt of the hospital report prior to resuming the additional allowance or increased compensation. In other cases not involving amputations or conditions essentially permanent the additional allowance or increased compensation for a nurse or attendant may be reawarded only upon a determination by the rating board that the veteran concerned is in further need of such services. The additional allowance or increased compensation for nurse or attendant is not to be reinstated for the purpose of applying the provisions of § 3.9 (e), which are applicable only to the proper running award. Where the veteran is not hospitalized and evidence is received indicating there is no further need for nurse or attendant, the provisions § 3.9 (e) are for application. (Secs. 27, 28, 48 Stat. 524, 59 Stat. 533, sec. 2, 60 Stat. 910; 38 U. S. C. 471a, 471a–3, 722, ch. 12 note)

§ 3.238 *Additional allowance not payable if condition requiring it is not service connected.* The additional allowance for a nurse or attendant is to be granted only when the disability is entirely the result of a service-connected disease or injury. (See § 3.176.)

§ 3.245 *Rates of pay for disability or death the result of training, hospitalization, or medical or surgical treatment under section 31, Public No. 141, 73d Congress, examination under section 12, Public No. 866, 76th Congress, and paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended.* Where the disease, injury, death, or the aggravation of an existing disease or injury resulted from submitting to an examination under authority of any of the laws granting monetary or other benefits to World War veterans, or from training, hospitalization, or medical or surgical treatment awarded under any of the laws granting monetary or other benefits to World War veterans (World War I and World War II), the compensation to be awarded will be determined as follows:

(a) *World War service.* In claims of veterans with World War (I or II) service as defined in Public No. 2, as amended, Public No. 141, 73d Congress, Public No. 344, 74th Congress, or Public No. 304, 75th Congress, and regulations and instructions issued pursuant thereto, the compensation to be awarded will be in accordance with the rates provided in the Veterans' Regulation No. 1 series, Part I, (38 U. S. C. ch. 12) and the Schedule for Rating Disabilities, 1945.

(b) *Service connection to be direct.* Under section 31, Title III, Public No. 141, 73d Congress, section 12, Public No. 866, 76th Congress, and paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended, service connection for additional disabilities incurred in the manner therein specified will be direct. Veterans with disabilities presumptively due to World War I service, who acquire additional disabilities as the result of training, hospitalization, or medical or surgical treatment, or as the result of having submitted to an examination under authority of any of the laws granting monetary or other benefits to World War I veterans will be paid benefits for such additional disabilities at 100 percent of the rates provided therefor in the Schedule of Disability Ratings, 1945, and Extensions thereto, if otherwise entitled.

(c) *For other than World War services.* See §§ 3.1085 to 3.1089, inclusive. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, sec. 2, 57 Stat. 43; 38 U. S. C. 501a, 501a–1, 701, ch. 12 note)

§ 3.247 *Entitlement to or continuation of award to child after reaching age of eighteen years when permanently incapable of self-support.* (a) A child of a veteran, within the appropriate definition of child, who, prior to reaching the age of eighteen years, becomes or has become permanently incapable of self-support by reason of mental or physical defect, will be entitled to receive or to

continue to receive as a child an award of compensation or pension under Public No. 2 or Public No. 141, 73d Congress, after reaching the age of eighteen years, provided entitlement thereto is otherwise established.

(b) The requirement that the child must have become permanently incapable of self-support by reason of mental or physical defect prior to reaching the age of eighteen years is not applicable to a child on the rolls March 19, 1933, as a helpless child under the precedents then in effect, inasmuch as it has a protected right to such benefits by virtue of the provisions of section 20, Public No. 78, 73d Congress, as amended by section 28, Public No. 141, 73d Congress. (Sec. 3, 43 Stat. 607, secs. 1, 7, 57 Stat. 554, 555; 38 U. S. C. 424, 727, ch. 12, ch. 12 note)

§ 3.248 *Continuance of award to child pursuing a course of instruction after it reaches the age of eighteen years.* When an unmarried child of a veteran entitled to disability compensation, pension, or emergency officers retired pay under Public No. 2, Public No. 78, 73d Congress, as amended, or Public No. 141, 73d Congress, as amended by Public Law 144, 78th Congress, is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute, or university particularly designated by it and approved by the Veterans' Administration, payment of an apportioned share of compensation, pension or emergency officers retired pay may be continued or made to, for, or on behalf of the child after it has reached the age of eighteen years, but not after it has reached the age of twenty-one years. (Effective Dates of Payments to a Child After it Reaches Eighteen Years of Age and is Pursuing a Course of Instruction—See § 4.98) (Sec. 9, 48 Stat. 10, secs. 1, 7, 57 Stat. 554, 555, 38 U. S. C. 709, 727, ch. 12, ch. 12 note).

§ 3.250 *Reduction or discontinuance of disability compensation or pension.* The effective date of the reduction or discontinuance of awards of disability compensation or pension will be in accordance with the provisions of Veterans' Regulation No. 2 (a), Part I, paragraph III (38 U. S. C., ch. 12), except as otherwise provided. Reduction or discontinuance because of ceasing school attendance shall be effective upon the last day which the child attended school, but in no event will pension or compensation be paid for a period beyond the day preceding the child's twenty-first birthday (Sec. 9, 48 Stat. 10, 38 U. S. C. 709).

§ 3.251 *Failure to report for physical examination.* (a) Upon the failure of a veteran without adequate reason to report for physical examination, requested for disability compensation or pension purposes, the award of disability compensation or pension in course of payment to him will be suspended as of the date of last payment. The reason given for suspension will be "Failure to report for examination." Any award of compensation or pension concurrently being paid to dependents will also be suspended. (Resumption of Payments—See § 3. 266.)

(b) Upon the failure of a veteran to report for physical examination, requested as a result of a claim for increased disability compensation or pension, the claim for the increase will be considered as abandoned. No further action thereupon will be taken unless and until a new claim for the increase is filed, and payments on the basis of the new application will be governed by the provisions of Veterans' Regulation No. 2 (a), Part I, paragraph II (38 U. S. C. ch. 12).

§ 3.255 *Reduction when disabled person is in a Veterans' Administration institution or other institution at the expense of the Veterans' Administration. (Section 1, Public Law 662, 79th Congress.)* (a) Where any veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration other than for Hansen's disease, any pension, compensation or retirement pay otherwise payable other than the additional allowance or increased compensation for aid and attendance shall continue without reduction until the first day of the seventh calendar month following August, 1946, or the month of admission of such veteran for treatment or care, whichever is the later. If treatment or care extends beyond that period, the pension, compensation, or retirement pay, if $30 per month or less, shall continue without reduction, but if greater than $30 per month, the pension, compensation, or retirement pay shall not exceed 50 per centum of the amount otherwise payable, or $30 per month, whichever is the greater. The pension, compensation, or retirement pay of any veteran leaving against medical advice or as the result of disciplinary action shall, upon a succeeding readmission for treatment or care, be subject to reduction, as herein provided, from the date of such readmission. The provisions of the preceding sentence, are not retroactive. Accordingly, where hospital treatment or domiciliary care being furnished a veteran by the Veterans' Administration was terminated by the veteran against medical advice or as the result of disciplinary action prior to August 8, 1946, the date of approval of Public Law 662, 79th Congress, such veteran is not subject to the reduction provided therein upon a succeeding admission subsequent to August 8, 1946.

(b) Where any veteran having neither wife, child nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration and shall be rated by the Veterans' Administration in accordance with regulations as being incompetent by reason of mental illness, the pension, compensation or retirement pay for such veteran shall be subject to the provisions of paragraph (a) of this section: *Provided further,* That in any case where the estate of such incompetent veteran derived from any source equals or exceeds $1,500, further payments of such benefits will not be made until the estate is reduced to $500. Payment will be discontinued effective as of the date of admission or the first day of the month following receipt of evidence showing the estate equals or exceeds $1,500, whichever is later, or in the event of a readmission where upon the prior admission the payments were discontinued because the veteran had an estate of $1,500, the discontinuance will be effective as of the date of the readmission, or if not so discontinued, the discontinuance will be effective the first day of the month following receipt of evidence showing the estate equals or exceeds $1,500.

(c) Any veteran subject to the provisions of paragraphs (a) and (b) of this section shall be deemed to be single and without dependents in the absence of satisfactory proof to the contrary; and in no event shall increased compensation, pension or retirement pay be granted for any period more than one year prior to the receipt of satisfactory evidence showing that the veteran has a wife, child or dependent parent. In those instances where the required proof of dependents is not of record, statements, on Veterans' Administration Form 10–404 or otherwise, as to dependency status, will constitute a prima facie showing thereof. The veteran will be informed of the necessary additional evidence and that in the event it is not submitted within sixty days award will be adjusted on the basis of a veteran without dependents, effective as provided in paragraph (a) of this section. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.256 *Adjustment of award of veteran upon termination of institutionalization by the Veterans' Administration.* (a) Where a veteran whose pension, compensation or retirement pay has been reduced or discontinued as provided in § 3.255 (a) is discharged from treatment or care upon certification of the officer in charge of the hospital, institution, or home, that maximum benefits have been received, or release is approved, the award to or on behalf of the veteran will be adjusted in accordance with the last valid rating, if otherwise in order, effective as of the day the veteran is discharged or released from the hospital or institution, and the award will include such additional amount as will equal the total sum by which the pension, compensation or retirement pay has been reduced; when the reduction or discontinuance has been effected pursuant to the provisions of § 3.255 (b), payment of the amount equal to the amount by which the pension, compensation, or retirement pay was reduced, will be awarded six months following the finding of competency, or in the event treatment or care is terminated by the veteran against medical advice, or as the result of disciplinary action, on or after August 8, 1946, payment of the amount by which the pension, compensation, or retirement pay was reduced will be awarded the veteran at the expiration of six months after the termination of treatment or care. Where a veteran in the last category is subsequently readmitted and continues such treatment or care until discharged upon certification by the officer in charge of the hospital, institution, or home in which treatment or care was furnished, that maximum benefits have been received or that release is approved, he shall be paid in a lump sum such additional amount as would equal the total sum by which his pension, compensation, or retirement

pay has been reduced under § 3.255 (a) subsequent to such readmission.

(b) While a veteran is on trial visit or other temporary absence from a Veterans' Administration hospital or center, no adjustment of his award by reason thereof will be made for any period of less than thirty days, inclusive of the day on which he left the institution. If the veteran is discharged without returning to the institution, the award will be adjusted in accordance with paragraph (a) of this section. The report of such absence will be made to the office having custody of the case file in accordance with effective procedure. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.265 *Reduction not authorized without reexamination.* The protection afforded by section 28, Public No. 141, 73d Congress, will not be withdrawn and compensation reduced or discontinued by reason of a new evaluation without physical examination, except that a physical examination will not be requested where there is on file a recent report that accurately reflects the current disability, is adequate for rating purposes, and meets the particular requirements of the applicable provisions of the Rating Schedules. A change in the combined rating incident to rerating from a temporary to a permanent basis (not involving change in the percentage evaluation of any disability) may be effected without reexamination. This requires that evaluations under the 1925 Schedule and awards based thereon in effect April 1, 1946, will be continued until change in physical or mental condition warrants amendment of the 1925 Schedule rating, at which time the rating will be under the 1945 Schedule only, as well as the award based thereon, except when a statutory award or rating under the World War Veterans' Act, 1924, as amended, as restored by Public No. 141, 73d Congress, as amended, is in order, in which event the statutory award or rating will be continued, or made in the manner provided for initial ratings under the 1945 Rating Schedule. It is to be distinctly understood that the application of the foregoing shall not result in a diminution of the compensation being paid on April 1, 1946, in any instance where the changed condition results in a greater degree of disability, whether viewed under the 1925 or 1945 Schedule. (60 Stat. 319, 38 U. S. C. 736)

§ 3.266 *Resumption of discontinued award where veteran subsequently reports for physical examination.* If, after suspension of his award, the veteran should subsequently report for physical examination and the evidence clearly establishes to the satisfaction of the rating agency concerned that during the period of his failure to report the disability in fact existed to a compensable degree, an award may be approved effective the date of suspension. However, if the evidence discloses a change in physical condition and that the disability is no longer compensable in degree, no action will be taken to reopen the award during the period of suspension. Where the disability is ratable in a lesser degree, the award under the reduced rating will be effective as of the date of suspension. Where the disability is ratable in a greater degree, the award at the increased rate may be made effective the date of physical examination by the Veterans' Administration, and from the date of suspension, the effective rate payable on the date of suspension will be awarded.

§ 3.267 *Resumption of awards discontinued under section 1, Public Law 662, 79th Congress.* Where payments to or in behalf of an incompetent beneficiary have been discontinued pursuant to the provisions of § 3.255 (b), the award will not be reopened unless and until an accounting is received, disclosing that the estate is reduced to $500 or less, whereupon payments at the rate provided in §3.255 (a), will be resumed effective as of the first of the month in which the notice is received: *Provided,* That if the disabled person is discharged from the institution before the estate is reduced to $500, or it is determined that he has a dependent or dependents or for any other reason does not meet the requirements of section 1, Public Law 662, 79th Congress, the award will be reopened in accordance with the facts found to exist. In the computation of the $1500 or $500 limitation there will be included money belonging to the disabled person in "Funds Due Incompetent Beneficiaries," in the possession of his fiduciary, if there is one, and/or in the possession of the chief officer of the institution. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.270 *Readjustment of awards to incompetent veterans under section 1, Public Law 662, 79th Congress.* (a) Where payments of compensation or pension were properly discontinued because the estate of the incompetent veteran equaled or exceeded $3,000 (limitation under section 202 (7) of the World War Veterans' Act, 1924, as amended) or $1,500, as the case may be, and there exists only a claim against a defunct bank or other institution, or the entire estate is the subject of litigation or consists of investments which have an undetermined value, and there is no income to provide for clothing and other needs and comforts for the veteran, the chief attorney may permit the present guardian to submit a sworn statement setting forth the facts and estimating what the said claim or chose in action would sell for in the open market. If, based upon such showing, the chief attorney is satisfied that the value of the estate, as so determined, does not exceed $500, he will prepare a certificate to that effect and forward it to the proper adjudicating agency in the field, or the central office. Upon receipt of the certificate, the adjudicating agency will award, effective the first day of the month in which the action is taken such payments as are in order.

(b) Upon settlement of the claim, or termination of the litigation, the chief attorney will again review the case, and, if the estate is then in excess of $1,500 will forward an appropriate certification to the adjudicating agency.

(c) If a special case arises which does not fall within the provision of this paragraph, or where money is urgently needed for the veteran, the complete facts should be reported to the office of the solicitor. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.275 *Payments; to whom made.* (a) The disability pension or compensation payable to a minor or a person mentally incompetent under the pension laws, Public No. 2, 73d Congress, Public No. 78, 73d Congress, or Public No. 141, 73d Congress, or the retirement pay to which an incompetent veteran is entitled may be paid to the guardian, curator or conservator, if one is serving, or to the person otherwise legally vested with the care of the beneficiary or his estate, or when payments have been suspended or withheld from a guardian, to a person having actual custody of the minor or incompetent, in accordance with the provisions of section 21 of the World War Veterans' Act, 1924, as amended by Public No. 262, 74th Congress, subject to §§ 3.276, 3.310 and 3.315. However, in any case of an incompetent veteran having no guardian, payment of compensation, pension, or retirement pay may be made in the discretion of the Administrator to the wife of such veteran for the use of the veteran and his dependents (sec. 2, Pub. Law 144, 78th Cong.).

(b) Benefits due a minor or incompetent adult Indian who is a recognized ward of the Government, for whom no legal guardian or other fiduciary has been appointed, may be paid to the proper superintendent or other bonded officer of the Indian Service designated by the Secretary of the Interior to receive funds, for the use of such beneficiary, in accordance with the provisions of Public No. 373, 72d Congress. (Sec. 21, 43 Stat. 613, 47 Stat. 907, sec. 1, 49 Stat. 607, sec. 2, 57 Stat. 554; 25 U. S. C. 14, 38 U. S. C. 450)

§ 3.276 *Institutional awards.* When an incompetent or insane disabled person entitled to disability compensation, pension or retirement pay is a patient in a hospital or institution, payments on his account may be made by means of an institutional award in accordance with the following:

(a) When no guardian has been appointed or when payments to an unsatisfactory guardian have been stopped or suspended.

(b) When a guardian neglects or refuses to furnish the chief officer of the hospital or institution with funds required for the disabled person's comforts and desires not included in the regular support, care, treatment, and maintenance of the disabled person provided by the institution.

(c) When a guardian requests that an institutional award be made or continued.

(d) In either event, in accordance with the provisions of section 1 (b) of Public Law 662, 79th Congress, there may be paid to the chief officer in behalf of the disabled person up to but not in excess of $30, depending upon the disability rating, per month, or in the event the veteran has dependents and more is payable under his disability rating or there are funds to his credit in "Funds Due Incompetent Beneficiaries," such additional amount as may be needed will be allowed, on the basis of a certification by the chief

officer of the hospital or institution with respect to the need and the amount required and a certification by the chief attorney concerned as to the neglect or refusal of the guardian to supply necessary funds. Accordingly, in such cases there may be awarded to the chief officer of the hospital or institution (for definition of chief officer see § 3.277) as provided above, any amount necessary for the disabled person's comforts and desires not included in the regular support, care, treatment, and maintenance of the disabled person provided by the hospital or institution. Any benefits payable on account of the disabled person not paid to the chief officer of the institution or to the guardian or not apportioned to a dependent or dependents will be paid into the "Funds Due Incompetent Beneficiaries." Any excess funds in the hands of the chief officer of an institution other than a Veterans' Administration hospital or center at the end of each accounting period, which he may deem unnecessary for expenditure for the benefit of a disabled person, will be returned to the Veterans' Administration or to the guardian, if one is serving.

(e) Where no guardian has been or is to be appointed, or when payments to an unsatisfactory guardian have been stopped or suspended, as indicated in paragraph (a) of this section, apportionment to dependents will be under § 3.315. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.277 *"Chief officer" defined.* The term "chief officer" will include and apply to all boards of control, trustees, boards of administration, commissions, other person or persons in charge of such institutions and the bonded officials thereof who are authorized by the laws of the United States, or of the respective States, to receive and disburse moneys for the benefit and in behalf of the inmates of such institutions. All awards made to a contract institution will be made to the bonded official thereof.

§ 3.278 *Funds available to beneficiary on a trial visit or upon discharge.* (a) The amount which shall have been paid the chief officer of an institution to be expended for the benefit of an incompetent or insane beneficiary may be made available by the chief officer for the use of the incompetent or insane patient while on a trial visit from the institution. Any part of the accrued funds, which in the judgment of the chief officer is thought necessary, may be paid to a beneficiary who is without a guardian, when departing upon a trial visit, provided he is regarded as competent to disburse the money with ordinary prudence. If, at the time of his departure upon a trial visit, there is any doubt as to the competency of the beneficiary to disburse properly such funds, or for any other good reason the chief officer considers it inadvisable to give the money to the beneficiary himself, a proper amount may be paid to the person into whose custody the beneficiary is released on a trial visit for the benefit of the beneficiary, and the person to whom the money is given for the benefit of the beneficiary will be required to account therefor to the chief officer of the institution.

(b) The foregoing rule will be applied in similar cases when a beneficiary without a guardian is discharged from the institution. At the time of discharge of the beneficiary, the chief officer will report the circumstances to the chief attorney for the purpose of initiating proceedings to secure the appointment of a guardian. At the same time the chief officer may request a recommendation from the chief attorney as to the amount considered necessary to provide for the beneficiary pending settlement of the guardianship phase. Payment may be made in the amounts and manner recommended by the chief attorney. The chief officer will request the recommendation of the chief attorney sufficiently in advance of the anticipated date of discharge in order to obviate delays.

§ 3.281 *Disappearance of incompetent veterans; payment to dependents*—(a) *Under Veterans' Regulation No. 1 (g) (38 U. S. C. ch. 12).* Where an incompetent veteran receiving or entitled to receive compensation under either part I or Part II of the Veterans' Regulation No. 1 series, disappears or has disappeared and for 90 days or more thereafter his whereabouts remain unknown to the members of his family and the Veterans' Administration, there will be paid to the dependents of the veteran the amounts authorized for surviving dependents under the Veterans' Regulation No. 1 series, Parts I and II, respectively, effective as of the day following the discontinuance of the veteran's award, date of veteran's disappearance, or April 1, 1935 (effective date of Veterans' Regulation No. 1 (g)), whichever is the later: *Provided,* That in no event will the monthly amount paid to dependents hereunder exceed the amount payable to a veteran at the time of his disappearance: *Provided further,* That the amounts authorized for surviving dependents of World War veterans under Part I of Veterans' Regulation No. 1 series will be the amounts authorized by section 14 (a) and (b), Public Law 144, 78th Congress, as amended. The provisions of this subparagraph are applicable only to the cases of incompetent veterans receiving or entitled to receive compensation under either Part I or Part II of the Veterans' Regulation No. 1 series (38 U. S. C. ch. 12).

(b) *Under section 8 of Public No. 304, 75th Congress.* Where an incompetent World War veteran receiving or entitled to receive compensation under Public No. 141, 73d Congress, disappears or has disappeared and for 90 days or more thereafter his whereabouts remain unknown to the members of his family and the Veterans' Administration there will be paid to the dependents of the veteran the amount of compensation payable to dependents of deceased veterans who die from war service-connected disabilities effective as of the day following the discontinuance of the veteran's award, date of veteran's disappearance, or August 16, 1937, whichever is the later. From August 1, 1943, as provided in section 14 (c) of Public Law 144, 78th Congress, the rates for dependents will be those authorized by section 14 (a) of that act, as amended. However, in no event will the amount paid to dependents hereunder exceed the amount payable to a veteran at the time of his disappearance.

(c) Awards to dependents will be prepared in accordance with effective awards procedure and will bear the notation "Veterans' Regulation No. 1 series, Part VI," where compensation is payable under Part I or Part II of the Veterans' Regulation No. 1 series, or "Section 8 of Public No. 304, 75th Congress," where compensation is payable under Public No. 141, 73d Congress. Apportionment of payments shall be in accordance with § 4.1591 of this chapter.

(d) Where a veteran's whereabouts become known to the Veterans' Administration after an award to dependents has been made as provided herein, the award to the dependents will be discontinued, effective the last day of the month in which the award action is taken, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found.

(e) Awards to dependents under Veterans' Regulation No. 1 (g), Part VI (38 U. S. C., ch. 12), or section 8, Public No. 304, 75th Congress, will not be continued for more than seven years from date of disappearance of the veteran in any case where the facts are such as to bring into effect the presumption of death provided in Public Law 591, 77th Congress. (Secs. 1, 4, 48 Stat. 8, 9, sec. 8, 50 Stat. 662, 38 U. S. C. 472e, 701, 704)

§ 3.286 *Determination of marital status, custody of child or children, or continuance of dependency.* When in any case wherein compensation, pension, or retirement benefits are being paid, it is deemed necessary to determine the current facts in regard to the marital status of the veteran, custody of child or children, or dependency of parent or parents, the necessary evidence will be requested and, when received, appropriate adjustment will be made in accordance with the facts disclosed pursuant to the provisions of law and the regulations and instructions based thereon. If the necessary information is not received within a reasonable time from the date of request therefor appropriate action will be taken to effect an adjustment on the basis of a single man without dependents, or through a discontinuance of benefits to the payee or payees, wife, child or children, or dependent parent or parents, as may be required by the facts. If the necessary evidence or information is thereafter received within one year from the date of request therefor, a readjustment may be made or the payment of benefits resumed, if otherwise in order, from the effective date of the adjustment or discontinuance previously necessitated by the non-receipt of the desired data. If the necessary evidence or information is not received within one year from the date of request therefor, the adjustment or resumption of payments will not be authorized prior to the date of receipt of the evidence or information. For the applicable rule in cases of institutionalization, see § 3.255 (c).

§ 3.292 *Award action upon failure to return questionnaire; as to income under Part III, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12.)* At the expiration

of the appropriate follow-up period if the questionnaire, either FL–619 or FL–619a, is not returned, the award will be discontinued effective the date of last payment and the veteran notified as to the reason for the discontinuance.

§ 3.293 *Restoration of award upon receipt of questionnaire.* If the questionnaire, either Form 619 or 619a, is returned within one year from the date of issuance, the award will be resumed, if otherwise in order, effective the date of discontinuance. If the questionnaire is not returned within one year, the award will be resumed, if otherwise in order, the date of receipt of the questionnaire.

§ 3.296 *Concurrent payment of benefits to same person.* (a) On and after July 13, 1943, the provisions of this paragraph are applicable to all laws administered by the Veterans' Administration. Not more than one award of pension, compensation or emergency officers or regular retirement pay, shall be made concurrently to any person based on his own service. The receipt of pension or compensation by a widow, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of his own service, shall not bar the payment of pension or compensation on account of the death or disability of any other person. Pension, compensation or retirement pay on account of his own service shall not be paid while the person is in receipt of active service pay, but the receipt of active service pay shall not bar the payment of pension or compensation on account of the death or disability of any other person (sec. 15, Pub. Law 144, 78th Cong.).

(b) For the purposes of Veterans' Regulation No. 1 (a), Part II, paragraph I (38 U. S. C. ch. 12), as amended by Public No. 159, 75th Congress (act of June 23, 1937), and as modified by section 304 of Public No. 732, 75th Congress (act of June 25, 1938), compensation shall not be paid concurrently with active duty pay or United States Employees Compensation. Where a naval reservist who is eligible for compensation is also eligible for the benefits of the United States Employees Compensation Act he shall elect which benefit he shall receive.

(c) Except where expressly prohibited by law (such as in sections 211 and 212 of the World War Veterans' Act, 1924, as amended, and section 31 of Public No. 141, 73d Congress), compensation or pension under the Veterans' Administration may be paid concurrently, if otherwise in order, with compensation under the United States Employees Compensation Act of September 7, 1916, as amended.

(d) New awards of naval allowance under sections 4756 and 4757, Revised Statutes, may not be awarded concurrently with other pensions or compensation. However, this provision does not apply to a continuation of those concurrent awards of naval allowances which were in effect on July 13, 1943, nor to renewals or continuation of such prior awards. (Sec. 15, 57 Stat. 559; 38 U. S. C. ch. 12 note)

§ 3.297 *Awards to custodians of incompetent or minor beneficiaries.* Where possible under State statutes, a legal custodian may be recognized in any claim otherwise requiring the appointment of a fiduciary because of the incompetency or minority of the claimant, subject to the limitations as to amounts set forth in § 14.205 of this chapter.

§ 3.298 *Payment of compensation or pension to minors discharged from the military service.* The minority of a person who has been discharged from the military or naval forces of the United States will not preclude direct payment of either compensation or pension to such person (sec. 21 (1), World War Veterans' Act as amended by Public No. 262, 74th Cong.). (Sec. 1, 49 Stat. 607, 38 U. S. C. 450)

§ 3.299 *Action where veteran returns to active duty status.* Compensation or pension may not be paid concurrently with the receipt of active service pay and where any person in receipt of compensation or pension returns to active duty status with any of the armed forces of the United States, or active service in the United States Coast Guard, benefits will be suspended effective the day preceding re-entrance, if known, or the date of last payment. In the latter instance the correct date on which the veteran re-entered active duty status will be ascertained and a corrected Stop (or Suspended) Payment Notice, Veterans' Administration Form 521, or amended award then executed as of the correct date. Where a member of the organized reserves, before entering upon active duty, surrenders or relinquishes the benefit which he is receiving, a Stop (or Suspended) Payment Notice, Veterans' Administration Form 521, will be executed as of the date of last payment. Official information showing the date upon which the veteran actually reentered active duty will be secured and there will be executed a corrected Stop (or Suspended) Payment Notice of amended award, whichever is in order. When it becomes necessary to discontinue payments of disability compensation, pension, or retirement pay because the veteran has re-entered active military or naval service, the representatives, including duly accredited service organization or attorney of record, will be informed by being furnished copy of the letter to the veteran notifying him of the discontinuance of payments. Payments may be resumed the day following release from active duty, provided the person is otherwise entitled. The determination of service connection upon which the award of benefits was originally made will not be disturbed. The resumption of payment of compensation as to amount, will be at a rate commensurate with the degree of disability found to exist at the time of restoration of the award. The appropriate form of the 3101 Series will be secured and the claim will be adjudicated upon a basis including the pertinent facts in the most recent period of active service. However, in instances where veterans of the military or naval forces also served during the present war and are discharged by reasons other than disability, such as to accept employment in an essential war industry, any examination indicated with reference to the condition for which disability benefits were formerly authorized may be conducted immediately upon presentation of the original discharge certificate. An effort should be made to see that the examination is completed by the time pertinent service data are received, and final adjudication should then be accomplished. A certified copy or abstract of the veteran's discharge certificate will be made and placed in the case file and the original certificate returned to the veteran. If a disability is incurred or aggravated in the second period of service, the benefits payable on account thereof cannot be paid unless a claim therefor is filed. (See § 3.27.) (Sec. 15, 57 Stat. 559; 38 U. S. C. ch. 12 note)

§ 3.300 *Military and naval retirement pay.* Under existing law, the only prohibitions against receipt of pension, compensation, emergency officers or regular retirement pay by a veteran on account of his own service are: (a) That not more than one award of such benefits shall be made concurrently, and (b) that such benefits shall not be paid while the person is in receipt of active service pay. (See § 3.296.) Therefore, an officer or enlisted man entitled to retirement with pay (retainer pay is in the nature of reduced retirement pay), who is also entitled to compensation or pension, may elect which of the benefits he desires to receive. Such election does not bar him from making a subsequent election of the other benefit to which he is entitled. The provisions of section 212, Public No. 212, 72d Congress, as amended, do not apply to compensation or pension, and do not in any way preclude such election. This interpretation may be applied retroactively if the claimant was not advised of his rights of election and the effect thereof, but in no event prior to July 13, 1943. Moreover, any person in receipt of regular retirement pay may by filing with the department by which such retired pay is paid a waiver of a part of such retired pay, equal in amount to the pension or compensation to which he is otherwise entitled, receive such pension or compensation concurrently with the balance of his retired pay (Public Law 314, 78th Cong.). However, such a retired person, who on the day of his retirement elected under section 212, Public No. 212, 72d Congress, to take the salary of his civilian office rather than the retired pay to which he would have been entitled but for his appointment to the civilian office, may not receive pension or compensation under Public Law 314, 78th Congress. (See Veterans' Administration Adjudication Procedures.) (Sec. 15, 57 Stat. 559, 58 Stat. 230; 38 U. S. C. 26c, ch. 12 note)

§ 3.301 *Civil Service retirement annuitants.* There is no applicable prohibition in the act of July 14, 1862, as amended, the Service Pension Acts, Public No. 2, 73d Congress, Public No. 141, 73d Congress, amendments thereto, or regulations thereunder, to the payment of the compensation, pension or emergency officers retirement pay to which a veteran has been found entitled, notwithstanding the receipt by him of a retirement annuity under the act of May

29, 1930, as amended. When there is information of record in the file of a veteran to whom compensation, pension, or emergency officers retirement pay has been or is being awarded that he is receiving or has applied for civil service annuity, the Civil Service Commission will be informed as to the nature, amount, and effective date of the benefit being paid, that is, compensation, pension, or emergency officers retirement pay, the law under which such payment is made, whether the benefit is by reason of age, service-connected disability or disability not incident to service, the dates of enlistment and discharge with respect to the period of service upon which the payment is based, and the character of discharge from such period of service.

§ 3.302 *Right of election.* Where a person has a right to benefits under two or more laws, he may elect to take under any law, regardless of whether it is the greater or lesser benefit, and even though his election results in reducing the benefits of his dependents. Any person who elects to receive monetary benefits under any law, places the right under another law in suspense and may at any time, on election, cause the suspension to be lifted by again electing monetary benefits under the other law.

CROSS REFERENCE: Awards to pension attorneys or agents. See Veterans' Administration Legal Procedures.

APPORTIONMENTS

§ 3.310 *Apportionments authorized.* Disability pension, disability compensation, emergency officers retirement pay, and on and after October 17, 1940, service pension and pension for service prior to April 21, 1898, amounting to more than $30 monthly, will be apportioned according to the table provided in § 3.311, except where otherwise authorized or provided herein:

(a) When the disabled person and his wife are not living together by reason of estrangement.

(b) Where the child or children are not in the custody of the disabled person.

(c) Where action is being effected toward the appointment of a fiudciary for an incompetent or insane beneficiary.

(d) In those cases where an incompetent veteran with a wife, child, or dependent parent, and for whom no guardian or other legal fiduciary has been appointed, is maintained in an institution by the United States or a political subdivision thereof, the disability pension payable under Veterans Regulation No. 1 (a), Part III (38 U. S. C. ch. 12), unless paid in the discretion of the Administrator to the wife of such veteran for the use of the veteran and his dependents, will be apportioned, if otherwise in order, in accordance with the schedule set out below. Prior to authorizing an apportionment of disability pension as provided herein adequate development will be accomplished for the purpose of determining the need therefor and the evidence to establish the marital status, relationship, and dependency in the case of a parent, will be secured. In any case where there is doubt as to the propriety of the contemplated action or where, after all feasibly available evidence is secured, there is doubt as to the marital status or relationship, the case will be submitted, together with a full statement of the pertinent facts, to the director, claims service, branch office, for an advisory opinion or such other action as may be deemed appropriate.

Where there is (are):

	Monthly
A wife but no child or where all children are in her custody: Portion to wife	$50.40
A child but no wife: Portion for child	39.60
Two or more children but no wife: Portion for children (to be divided equally between them)	50.40
A dependent parent but no wife or child: Portion for parent	39.60
Two dependent parents but no wife or child: Portion for parents (to be divided equally between them)	50.40

Any increase in pension by reason of the veteran having attained the age of sixty-five or having been rated permanently and totally disabled and in receipt of pension for a continuous period of ten years or more will be added to the amount allowed the dependents as hereinabove described. There will be paid to the manager, if a Veterans' Administration hospital or center, or such other proper official in charge of the institution any sum remaining unawarded. When the apportionments provided herein are believed to work a hardship upon one or more parties in interest, recourse then may be had to the provisions of § 3.315 for a special apportionment under the approved procedure relating thereto.

Running awards not consistent with the foregoing provisions will not be automatically reviewed for such purpose but will be adjusted when the particular case otherwise requires award action.

(e) Where it is determined that an institutional award in behalf of an incompetent or insane beneficiary is in order, pending action on a special apportionment under § 3.315. (38 U. S. C. ch. 12, Reg. 6 (c), as amended) (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195, sec. 1 (B), 60 Stat. 908 38 U. S. C. 49a note, 704, 739, ch. 12 note).

§ 3.311 *Table of apportionments.* (a) Apportionments will be as follows:

	Portion for disabled person	Portion for wife where children are in her custody	Portion for children not in custody of wife or veteran
Disabled person and—	*Percent*	*Percent*	*Percent*
Wife but no child	70	30	----------
Wife and 1 child	60	40	[1] 20
Wife and 2 children	55	45	[1] [2] 25
Wife and 3 or more children	50	50	[1] [2] 30
No wife but 1 child	80	----------	20
No wife but 2 children	70	----------	[1] 30
No wife but 3 or more children	65	----------	[1] 35

[1] Equally divided.
[2] Percentage for child or children will be deducted from percentage for wife and children.

(b) When the wife is living separate and apart from the disabled person, and the child or children are living with her and the wife is entitled to an apportioned share of disability compensation, service pension or emergency officers retirement pay, both on account of herself and the child or children, the benefit as provided in paragraph (a) of this section will be paid to the wife in one monthly amount on account of herself and such child or children in her custody.

(c) Where the evidence of record shows that the veteran and his wife are separated, the whereabouts of the wife is unknown, and all reasonable means to locate the wife have been unsuccessful or where she states in writing that she desires no share of the award, or fails for 90 days or more to respond to correspondence from the Veterans' Administration informing her of her rights, which is not returned unclaimed, there will be no apportionment on her account unless the rating is on a temporary basis, in which event there will be reserved for the wife only that amount authorized by the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, to be paid on her account at such time as her whereabouts may be ascertained. If there are children not in the veteran's custody the award will be apportioned according to the table provided in paragraph (a) of this section on the basis of the disabled person and child or children until such time as the whereabouts of the wife may be ascertained or she expresses a desire to claim her share of the award. In such event the award will be reapportioned on the basis of the disabled person, wife and child or children.

(d) If and while a claimant is rated temporarily disabled, that part of the benefit which is payable to him by virtue of his having a dependent father or mother, or both, will be apportioned and paid directly to the dependent when it appears that the claimant has neglected or refused to contribute to his, her, or their support in substantially the amount which he, she, or they would receive if apportionment were made: *Provided,* That no apportionment will be made where the duly appointed guardian under orders of the court of appointment makes or has made like contribution for the support of the parent or parents. (Section 1 (b), Public Law 662, 79th Congress.) (Sec. 4, 48 Stat. 9, Sec. 1 (B), 60 Stat. 908; 38 U. S. C. 704, 739, ch. 12 note)

§ 3.312 *Apportionment not authorized.* No apportionment will be authorized:

(a) Where the wife of a disabled person has been found guilty of conjugal infidelity by a court of competent jurisdiction, except the additional amounts specifically authorized by the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, to be paid on her account.

(b) (1) Where the child of the disabled person has been legally adopted other than by the disabled person, except the additional amount specifically authorized by the World War Veterans' Act, 1924, as amended, as reenacted by Public No. 141, 73d Congress, to be paid on account of the child. This provision is not applicable to death benefits.

(2) Where the child is not in the custody of the disabled person by reason of the child's entry into the active military or naval service, even though by

reason of his minority the veteran's compensation is still payable at a higher rate, and irrespective of whether compensation was apportioned for the child prior to his entry into the active military or naval service.

(c) Unless and until relationship and dependency is established in accordance with the requirements of the particular law and regulations and instructions issued pursuant thereto, under which the monetary benefit is payable.

(d) Where the disabled person or his guardian is rendering support which, in view of the circumstances present in the individual case, is considered fair and reasonable.

(e) Under § 3.310, where the monetary benefit payable is $30 monthly, or less.

(f) Under § 3.310, where the monetary benefit is payable under Part III, of the Veterans' Regulation No. 1 series (38 U. S. C. ch. 12), except as provided in § 3.310 (d).

(g) Of any amount in excess of the rate for total disability or of the additional amount authorized by the last paragraph of section 202 (3), or section 202 (5), World War Veterans' Act, 1924, as amended, or the additional amount payable under Veterans' Regulation No. 1 (a), Part I, paragraph II (k), or Part II, paragraph II (k) (38 U. S. C. ch. 12). Where pension is being paid under Public No. 323, 71st Congress (act of June 9, 1930), no amount in excess of $75 monthly will be subject to apportionment, where pension is being paid under Public No. 541, 75th Congress, no amount in excess of $60 monthly will be subject to apportionment, and where pension is being paid on or after April 1, 1944, under Public Law 242, 78th Congress, no amount in excess of $75 monthly will be subject to apportionment.

(h) Where the wife, child, father or mother of the disabled veteran is shown by evidence satisfactory to the Administrator of Veterans' Affairs to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies. (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195, sec 1 (B), 60 Stat. 908; 38 U. S. C. 49a note, 704, 739, ch. 12 note)

§ 3.314 *Action to be taken where payments have not been made under apportionments.* In apportioning disability pension, service pension, disability compensation, or emergency officers retirement pay, the provisions of §§ 3.310 to 3.317, will be applicable to all cases coming within the purview thereof where apportionments or division of pensions have been made but in which payments have not been made to the dependents for all periods affected. In the case of a divison of pension, the Act of March 3, 1899, will be applicable for all periods prior to October 17, 1940. (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note, 704)

§ 3.315 *Special apportionments.* Where it is clearly shown by competent evidence that the application of the provisions of §§ 3.276, 3.310, and 3.311 or the fact that no apportionment is authorized under § 3.312, will result in undue hardship upon the disabled person or any one of his dependents and relief can be afforded without undue hardship to the other persons in interest, the complete case file will be forwarded by the authorization officer or the attorney reviewer with appropriate recommendation as to the exact manner of the proposed relief, to the adjudication officer, assistant adjudication officer, or the chief, or assistant chief, claims division, who will determine without regard to the provisions of §§ 3.276, 3.310, 3.311, and 3.312, the disability pension, service pension, disability compensation or emergency officers retirement pay, which will be apportioned and the exact amount to be apportioned to each individual in interest. Should an appeal from such apportionment be received the case file will be referred to the adjudication officer, assistant adjudication officer, or the chief, or assistant chief, claims division, in order that the special apportionment from which the appeal is taken may be reconsidered in the light of any additional evidence developed in connection with the appeal. When it is found that no change is warranted, Veterans' Administration Form P–8d, properly prepared, will be approved. Thereafter regular appellate procedure will be for application. (Veterans' Administration appeal procedure) (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note, 704)

§ 3.316 *Effective date of apportionments.* The effective date of an apportionment will be the first day of the month next succeeding that in which the notice of estrangement or that the child or children are not in the custody of the disabled person, is received in the Veterans' Administration, and the disabled person's award will be immediately adjusted in order to make payable to him or her only the apportioned amount to which he or she would be entitled under §§ 3.310 and 3.311. *Provided,* That in initial awards benefits or apportionments will be granted over the entire period covered by the initial awards in accordance with the facts found, except that pension payable under section 30, Title III, Public No. 141, 73d Congress, for periods prior to June 30, 1934 (the effective date of Veterans' Regulation No. 6 (c)), will be awarded in accordance with the instructions in effect prior to that date. The effective date of an apportionment under § 3.310 (c) and (d) will be the date on which the veterans' award is suspended or the date from which an institutional award in his behalf is made: *Provided,* That in initial awards apportionments as authorized herein will be granted over the entire period covered by the initial awards in accordance with the facts found. (38 U. S. C. ch. 12, Reg. 6 (c)) (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note, 704)

§ 3.317 *Discontinuance of apportionments; effective dates.* Where disability pension, disability compensation, service pension or emergency officers retirement pay is apportioned between the veteran and his dependents and payments have been or are being made to the dependents subsequent to the date of cessation of the condition on which it is predicated, the effective date of discontinuance of the apportioned benefit to the dependent shall be the date of last payment and the award to the veteran will be adjusted accordingly; except that in the event of death, the date of death; divorce, the date preceding the date of divorce; in the case of a child, the date preceding the eighteenth, or twenty-first birthday, or cessation of school attendance, or the date preceding the date of marriage, will be the effective date. Where a minor child of a disabled person being paid apportioned disability compensation, pension or emergency officers retirement pay enters the active military or naval service, such apportioned award will be discontinued as of the date of last payment and, effective as of the next day, such child's apportioned share will be added to the disability compensation, pension or emergency officers, retirement pay otherwise payable to the veteran. Where the estranged wife of a disabled veteran is receiving apportioned disability compensation, pension or emergency officers retirement pay in behalf of herself and a minor child and such minor child enters the active military or naval service, the apportioned share for the estranged wife will be continued in the same amount as was payable prior to the child's entry into active service, such increased amount to continue during the child's minority or until the cessation of the condition upon which the apportionment was made. The provisions of the two sentences immediately above are also for application when retirement pay under section 5, Public No. 18, 76th Congress, is apportioned while the veteran is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof. (Sec. 4, 48 Stat. 9, sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note, 704)

APPEALS

§ 3.328 *Merger of administrative appeals in veterans' appeal.* If an administrative appeal is entered and there is also entered prior to the release of the case folder to the chairman of the board of veterans appeals, an appeal by the claimant or his accredited representative, the administrative appeal will be considered as merged in the claimant's appeal and the case will be handled in accordance with procedure governing appeals by claimants or their accredited representatives. In the event the case file is received by the board of veterans appeals by reason of an administrative appeal, but prior to the rendition of appellate decision in such a case there is received in the board of veterans appeals an appeal entered by the claimant or his accredited representative, the administrative appeal will be considered as merged in the claimant's appeal and the procedure governing appeals by claimants or their accredited representatives will be for application. An administrative appeal will not be merged with a claimant's appeal if the matters in issue refer to the application of different statutes and the regulations issued pursuant thereto. (Secs. 9, 20, 32, 48 Stat. 10, 309, 526; 38 U. S. C. 709, 722)

§ 3.329 *Restriction as to change in payments pending determination of administrative appeals.* In the event of an administrative appeal by the manager

or the adjudication officer in a field office, or the chief, claims division, in cases adjudicated by the central disability board, no change in payments based on the result of the review or determination will be made until a decision is rendered by the board of veterans appeals. (Secs. 9, 20, 32, 48 Stat. 10, 309, 526; 38 U. S. C. 709, 722)

§ 3.330 *Finality of unappealed decisions.* A decision of a rating board unappealed within one year shall be final. (Secs. 9, 20, 32, 48 Stat. 10, 309, 526; 38 U. S. C. 709, 722)

§ 3.333 *Submission of additional evidence within the appeal period.* Additional material and pertinent evidence may be submitted within the appeal period, and if submitted, will be considered by the rating agency of original jurisdiction and an appropriate determination made. The submission of additional evidence will not extend the period in which an appeal may be taken. The appeal period in any event begins to run as of the date of notice of the initial decision. (38 U. S. C. ch. 12, Reg. 2 (a).) (Secs. 9, 20, 32, 48 Stat. 10, 309, 526; 38 U. S. C. 709, 722)

CROSS REFERENCE: *Submission of cases requiring decision by special review board.* See § 19.1 of this chapter.

ADJUDICATION UNDER PRIOR LEGISLATION

§ 3.341 *Rating decisions made and signed prior to March 20, 1933.* Where in original claims and claims for increase of pension, compensation, or emergency officers retirement pay, filed prior to March 20, 1933, a favorable rating decision predicated upon the proofs and evidence received by the Veterans' Administration prior to March 20, 1933, has been signed, monetary benefits authorized by such decision may be awarded and paid in accordance with the provisions of such prior laws and the Veterans' Administration issues applicable. (Public No. 78, 73d Congress.) (Sec. 20, 48 Stat. 309; 38 U. S. C. 722)

§ 3.342 *Rating decisions made subsequent to March 20, 1933, but based on evidence received prior to March 20, 1933.* Original claims and claims for increase of pension, compensation or emergency officers retirement pay filed prior to March 20, 1933, may be adjudicated on the proofs and evidence received by the Veterans' Administration prior to March 20, 1933, and monetary benefits awarded and paid in accordance with the provisions of such prior legislation and the Veterans' Administration issues applicable. The condition that a claim may be adjudicated on the "proofs and evidence" received by the Veterans' Administration prior to March 20, 1933, will be met when there was filed with the Veterans' Administration prior to March 20, 1933, proofs and evidence establishing prima facie entitlement to the benefits sought. The condition of law that proofs and evidence necessary to the adjudication of a claim must have been received by the Veterans' Administration prior to March 20, 1933, will be considered as having been met when the only evidence lacking on March 20, 1933, was such as the following: *Provided,* That such evidence is of record at the time of the adjudication of the claim:

(a) Letters testamentary, letters of administration, and letters of guardianship.

(b) See § 3.347.

(c) Official records from the War or Navy Department.

(d) Where an award has been approved and payments of compensation were commenced prior to March 20, 1933, any apportioned or additional compensation withheld pending the receipt of necessary evidence such as proof of relationship may be awarded to the veteran or to the dependents even though such evidence is received after March 20, 1933.

However, only one adjudicative action and one appeal may be taken in this class of case. (Public No. 78, 73d Congress) (Sec. 20, 48 Stat. 309; 38 U. S. C. 722)

§ 3.343 *Appeals entered prior to March 20, 1933.* Where in original claims and claims for increase of pension, compensation, or emergency officers' retirement pay, rating or appellate action has been taken adversely to the veteran, but the claim has been continuously prosecuted, a proper appeal has been entered prior to March 20, 1933, the appeal will be considered by the board of veterans' appeals on the proofs and evidence received by the Veterans' Administration prior to March 20, 1933, and monetary benefits awarded and paid, if in order, in accordance with the provisions of such prior legislation and the Veterans' Administration issues applicable. (Public No. 78, 73d Congress) (Sec. 20, 48 Stat. 309; 38 U. S. C. 722)

§ 3.344 *Affirmative claim as a prerequisite to entitlement.* Sections 3.341, 3.342, and 3.343, comprehend only those cases in which there is an affirmative claim by the veteran or his representative received by the Veterans' Administration prior to March 20, 1933, which may be (a) an original claim in which no rating action has been taken prior to March 20, 1933, (b) an original claim in which rating action had been taken but which had been continuously prosecuted without final disallowance prior to March 20, 1933, (c) a request for reconsideration which had not been denied on March 20, 1933, and which from the date of receipt has the attributes of an original claim, and (4) claims for increase. (Sec. 20, 48 Stat. 309; 38 U. S. C. 722)

§ 3.345 *Limitation of payments.* Payments of pension, compensation, or emergency officers' retirement pay which are in order under §§ 3.341, 3.342, and 3.343, will be made only to include June 30, 1933. Such claims shall be subject to review without the filing of further claim under the provisions of section 17, Public No. 2, 73d Congress, and the regulations issued pursuant thereto. (Sec. 17, 48 Stat. 11; 38 U. S. C. 718)

§ 3.346 *Administrative reopening of claims.* No provision is made in paragraph 2 of section 20, Public No. 78, 73d Congress, for the reopening or review of any other type or class of claims for pension, compensation, or emergency officers' retirement pay. No claims, therefore, which were reopened and reconsidered on the initiative of the Veterans' Administration and in which the veteran or his representative made no request for reconsideration prior to March 20, 1933, will be considered. (Sec. 20, 48 Stat. 309; 38 U. S. C. 722)

§ 3.347 *Clarifying evidence.* In claims under §§ 3.341, 3.342 and 3.343, where additional evidence is required for the purpose of inquiring into the veracity of a witness or the authenticity of the documentary evidence, the additional evidence may be obtained after March 20, 1933, if the evidence necessary to establish entitlement to the benefits sought was received prior to March 20, 1933. However, any evidence essential to the allowance of the claim or to enlarge the proofs and evidence on file prior to March 20, 1933, may not be considered if not received prior to that date. Documentary or other specific proof of relationship or other fact shown prima facie in the record prior to March 20, 1933, received on or after that date will be deemed to constitute an enlargement of the proofs and evidence on file prior to March 20, 1933.

EMERGENCY OFFICERS RETIREMENT CLAIMS

§ 3.350 *Adjudication of benefits in emergency officers retirement claims.* After a determination as to entitlement or nonentitlement is made by the board of veterans appeals, and after the approval of the necessary award action by the claims division, veterans claims service, claims for emergency officers retirement will be decentralized to the proper regional office or center, except where jurisdiction is vested in central office as provided in § 3.1025 and will thereafter be adjudicated by the adjudication division in the field offices for the purpose of awarding or apportioning emergency officers retirement payments, pension, or compensation: *Provided,* That where denial is made by the board of veterans appeals in its capacity as a body of original jurisdiction in claims for emergency officers retirement pay, decentralization will be effected upon the expiration of a period of one year from the date on which notice of the decision is dispatched to the claimant, if in the meantime an appeal is not filed: *And provided further,* That where denial is made by the board of veterans appeals on appeal, decentralization will be withheld for a period of six months from the date on which notice of the decision is sent to the claimant. Payment Card, Veterans' Administration Finance Form 1071, will be retained in central office. (Sec. 10, 48 Stat. 10; 38 U. S. C. 710)

§ 3.351 *Service required to establish title to emergency officers retirement pay.* A person must have served as a commissioned officer in one of the branches of the service between April 6, 1917, and November 11, 1918, or if he served in Russia between April 6, 1917, and April 1, 1920, before he would be entitled to continue to receive retirement pay under Public No. 2, 73d Congress.

CROSS REFERENCE: *Retroactive payments of emergency officers retirement benefits.* (See §§ 3.341 to 3.347.)

§ 3.352 *Protection afforded benefits being paid on March 20, 1933; payments not limited to $360 per month.* The phrase "entitled to continue to receive retirement pay at the monthly rate now being paid him" contained in section 10, Title I, Public No. 2, 73d Congress, and Veterans' Regulation No. 5, does not include the additional allowance for nurse or attendant which was being paid the retired officer on March 20, 1933, since such allowance was not a part of the retirement pay. Section 28, Public No. 141, 73d Congress, was not intended nor designed to protect an award for a nurse or attendant to those retired officers who continued to receive retirement pay under section 10, Title I, Public No. 2, 73d Congress. Any retired emergency officer in receipt of retired pay on March 20, 1933, will be deemed to have been in receipt of compensation or pension. That part of Public No. 2, 73d Congress, as amended, providing $360 as the maximum rate of compensation which may be paid for disability, has no application to emergency officers retirement payments.

CROSS REFERENCES: *Right of election between emergency officers retirement pay, compensation and pension.* (See § 3.300.)
Forfeiture. (See § 3.69.)

§ 3.353 *Disability incurred while serving as enlisted man or commissioned officer.* Whether the disability was incurred while serving as an enlisted man or as a commissioned officer, an emergency officer, if otherwise eligible, is entitled to continue to receive retirement pay if he served as a commissioned officer between the dates specified in § 3.351 and the disability was incurred during an enlistment or enrollment entered into between such dates.

§ 3.354 *Difference between retirement pay and active service pay.* There may be paid to a retired emergency officer concurrently with active service pay, the difference between his retirement pay as such officer and his active service pay as a member of the armed forces.

CROSS REFERENCE: *Apportionment of emergency officers retirement pay.* (See §§ 3.310 to 3.317.)

§ 3.355 *Physical examinations on emergency officers retirement claims.* Physical examinations in connection with emergency officers retirement claims will be made only upon central office request initiated by the chairman, board of veterans appeals, and communicated to the field station concerned by the chief medical director, department of medicine and surgery: *Provided,* That physical examinations for compensation or pension benefits will be authorized by the adjudication agency having jurisdiction of the claim. (Sec. 1, 48 Stat. 8; 37 U. S. C. 701)

§ 3.356 *Subsequent findings of combat incurrence by adjudicating agencies of original jurisdiction.* (a) Where a claim for retirement has been allowed or denied by the board of veterans appeals, no other rating agency will thereafter make an initial finding in such claim that any disability was incurred in combat with an enemy of the United States. If a rating agency is of the opinion that the veteran has a disability which was incurred in combat, the claim will be transmitted to the board of veterans appeals with appropriate recommendation. The initial rating action taken by the board of veterans appeals in these cases will be subject to appeal within the time prescribed by regulations.

(b) Where a veteran receiving emergency officers retirement benefits enters Federal employment, and there has been no determination as to whether the disability for which he was retired was incurred in combat or was due to the explosion of an instrumentality of war, any action to adjust the payments required by § 3.358 (a) will be accomplished and the claims folder submitted to the board of veterans appeals for appropriate determination of that phase of the claim.

§ 3.357 *Subsequent findings of thirty per centum or more by adjudicating agencies of original jurisdiction.* Where a claim for emergency officers retirement has been denied by the board of veterans appeals, no rating agency will thereafter make a rating of thirty per centum or more for a single disability or for a combination of disabilities effective on or before May 24, 1929, but if such rating is deemed to be indicated, the claim will be submitted to the board of veterans appeals with appropriate recommendation.

§ 3.358 *Public No. 212, 72d Congress, as amended.* (a) Effective July 1, 1932, section 212 of Public No. 212, 72d Congress, as amended, which is permanent legislation, prohibits the concurrent payment of retirement pay and salary from the United States Government or the municipal government of the District of Columbia, or any corporation, the majority of the stock of which is owned by the United States, except under certain specified conditions. However, such prohibition is inapplicable if the disability for which retired was incurred in combat with an enemy of the United States. On and after July 15, 1940, the above restriction is also inapplicable if the disability for which retired resulted from an explosion of an instrumentality of war in line of duty. A finding by the board of veterans appeals that a disability is the direct result of the performance of duty, or that on all the evidence of record it is clearly shown that the disability for which retirement was granted was incurred in or aggravated by active service in fact in line of duty without benefit of any statutory or regulatory presumption of any kind, does not of itself meet the requirements of Public No. 212. There must be a specific finding of combat incurrence of a disability for which retirement was granted or a specific finding that the disability resulted from an explosion of an instrumentality of war in line of duty during enlistment or employment as provided in Veterans' Regulation No. 1 (a), Part I, paragraph I (38 U. S. C. ch. 12). If a retired officer is also an employee of the United States within the purview of section 212, Public No. 212, 72d Congress, as amended, and his retired pay is at a rate equal to or in excess of $3,000 per annum, he must elect which form of payment he desires during the period of such incumbency. If the rate of the retired pay and the rate of civilian compensation, when combined, are equal to or less than $3,000 per annum, he is entitled to both. On the other hand, if the civilian compensation is at a rate of less than $3,000 and the retired pay is also at a rate of less than $3,000, he is entitled to the full amount of his civilian pay and to such additional amount from the retired pay as will make a total payment annually of $3,000. (Comptroller General—June 25, 1942, B–24989.) If the retired pay is at a rate of less than $3,000 and the civilian pay is at a rate in excess of $3,000, there is no right of election, the civilian pay must be paid and even though it is a part-time position and the salary actually paid is less than $3,000 per annum, there is no right to any portion of the retired pay. (Comptroller General—August 17, 1932, 12 Comp. Gen. 256.) The claim of a part-time employee should be adjudicated on the "rate" of pay for the position rather than on the part-time pay received. It is, therefore, necessary to ascertain from the department or establishment where the veteran is employed, the annual rate of pay for the position held. Section 212, Public No. 212, 72d Congress, as amended, is applicable to persons receiving fees from the Federal Government only when such fees are paid in connection with employment in "a civilian office or position, appointive or elective, under the United States Government or Municipal Government of the District of Columbia, or under any corporation, the majority of the stock of which is owned by the United States." However, when the fees are based on services furnished under contract, i. e., when the person receiving same is not an "employee," section 212, Public No. 212, 72d Congress, as amended, is not for application. For example, employment by the Veterans' Administration of former officers of the armed forces retired for disability as consultants upon a fee basis pursuant to section 14 (a) of Public Law 293, is not in contravention of section 212 of Public No. 212, 72d Congress, inasmuch as such consultants do not occupy an "office or position" within the meaning of those terms as used in the cited statute notwithstanding that the term "compensation" as used therein is sufficiently broad to include fees. (Decision of Compt. Gen. B–62616, January 17, 1947)

(b) In the preparation of awards involving Federal employees, subject to section 212, Public No. 212, 72d Congress, as amended, the amount of Federal salary received, including the Civil Service Retirement and Federal income tax deductions, will be shown on the award under "Remarks." Amounts received by Government employees as overtime compensation or additional compensation under Public Law 49, 78th Congress, or amounts payable under Public Laws 106 and 390, 79th Congress, other than increases in basic rates of compensation, which the Act expressly provides shall be considered a part of basic compensation, shall not be considered in determining the amount of a person's annual income or annual rate of compensation for the

purposes of section 212, Public No. 212, 72d Congress, as amended.

(c) A veteran whose emergency officers retirement pay was suspended by reason of this Act is entitled to benefits provided by Public Nos. 2 and 141, 73d Congress, without the necessity of filing a new claim: *Provided, however,* That if he has rights to continuation of emergency officers retirement pay under Public No. 2, 73d Congress, he cannot receive other benefits without a specific election. (Sec. 212, 47 Stat. 406, sec. 3, 54 Stat. 761, 59 Stat. 295, 60 Stat. 216; 5 U. S. C. 59a, 901, 902 note)

§ 3.359 *Statutory allowance not payable.* Retired emergency officers and retired enlisted men and officers of the regular service are not entitled to the statutory allowances, including the additional allowance for a nurse or attendant, payable in addition to compensation.

SERVICE REQUIREMENTS (VETERANS CLAIMS, CENTRAL OFFICE SECTION)

Beginning and Ending Dates of Wars (All Dates Inclusive)

CROSS REFERENCE: *World Wars I and II.* (See § 3.0.)

§ 3.1000 *Spanish-American War*—(a) *As to Public No. 2 and Public No. 141, 73d Congress.* April 21, 1898, to August 12, 1898.

(b) *As to laws reenacted by Public No. 269, 74th Congress.* April 21, 1898, to April 11, 1899. (Sec. 1, 41 Stat. 982, secs. 1, 2, 44 Stat. 382, sec. 1, 46 Stat. 492, secs. 4, 30, 48 Stat. 9, 525, 49 Stat. 614; 38 U. S. C. 362, 364, 364a, 365, 366, 368, 704)

§ 3.1001 *Boxer Rebellion*—(a) *As to Public No. 2 and Public No. 141, 73d Congress.* June 20, 1900, to May 12, 1901.

(b) *As to laws reenacted by Public No. 269, 74th Congress.* June 16, 1900, to May 12, 1901. (Sec. 1, 41 Stat. 982, secs. 1, 2, 44 Stat. 382, sec. 1, 46 Stat. 492, secs. 4, 30, 48 Stat. 9, 525, 49 Stat. 614; 38 U. S. C. 362, 364, 364a, 365, 366, 368, 704)

§ 3.1002 *Philippine Insurrection*—(a) *As to Public No. 2, and Public No. 141, 73d Congress.* August 13, 1898, to July 4, 1902 (to July 15, 1903, if there was service in the Moro Province).

(b) *As to laws reenacted by Public No. 269, 74th Congress.* April 12, 1899, to July 4, 1902 (as to veterans only, to July 15, 1903, if there was service in the Moro Province). (Sec. 1, 41 Stat. 982, secs. 1, 2, 44 Stat. 382, sec. 1, 46 Stat. 492, sec. 30, 48 Stat. 525, 49 Stat. 492; 38 U. S. C. 362, 364, 364a, 365, 366, 368)

§ 3.1003 *Indian Wars.* (See also § § 3.1000, 3.1014 and 3.1021.) All campaigns recognized by the War Department, including those cited in the act of March 4, 1917, as amended by the act of March 3, 1944, between January 1, 1817, and December 31, 1898. (Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108; 38 U. S. C. 381)

§ 3.1004 *Civil War.* April 12, 1861, to April 13, 1865. Extended in certain instances. (See § 3.1022.) (Sec. 1, 46 Stat. 529; 38 U. S. C. 274)

Persons Included, in Addition to Officers and Enlisted Men; Other Than Those Mentioned in the Act of July 14, 1862, and Other Controlling Laws

§ 3.1006 *Public No. 2, 73d Congress.* (See also § 3.1.) (a) Personnel of the Revenue Cutter Service while serving under the direction of the Secretary of the Navy in cooperation with the Navy.

(b) Contract surgeons, except as to Part III, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12.) (Sec. 2, 26 Stat. 182, 36 Stat. 297, sec. 1, 46 Stat. 847, secs. 4, 30, 48 Stat. 9, 525, 50 Stat. 305, sec. 304, 52 Stat. 1181, sec. 3, 54 Stat. 885, 55 Stat. 598, 733, 57 Stat. 371; 34 U. S. C. 855c, 38 U. S. C. 12, 238, 238c, 328, 366, 704, ch. 12 note, 50 U. S. C. 301, App. 303)

§ 3.1007 *Public No. 141, 73d Congress, and Public No. 269, 74th Congress, and Reg. No. 1 (f) (38 U. S. C. ch. 12).* Same as § 3.1006 as to service during the wars enumerated in the laws reenacted by these acts, except as to service pension for contract surgeons. (Secs. 1, 4, 30, 48 Stat. 8, 9, 525, 49 Stat. 614; 38 U. S. C. 366, 368, 701, 704)

§ 3.1009 *Indian wars. (See also §§ 3.1003, 3.1014 and 3.1021.* The act of March 3, 1927, includes only officers and enlisted men employed in the military arm of the State, Territory or United States, and no class of civilian employees is included. (Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108; 38 U. S. C. 381)

§ 3.1010 *Civil War (act of June 9, 1930).* (a) A substitute accepted and mustered in as a substitute for another person.

(b) Personnel of vessels of the Revenue Cutter Service while cooperating, under orders from the President, with the Regular Navy.

(c) Midshipmen who served aboard a ship that was part of the naval establishment during the Civil War on cruising practice for 90 days or more.

(d) Pay clerks in the Navy.

(e) Army nurses (act of August 5, 1892), employed by the Surgeon General, who rendered actual service as nurses in attendance upon the sick or wounded in a hospital for a period of six months or more. The determination of whether actual service as a nurse was rendered is made by the Veterans' Administration and not by the Surgeon General of the Army. Such services as scrubbing floors, cleaning windows, making up cots, and bringing food to the sick and wounded in a hospital are not services as "nurse in attendance upon the sick or wounded." (Sec. 1, 27 Stat. 348, sec. 1, 38 Stat. 800, sec. 1, 46 Stat. 529; 5 U. S. C. 41, 38 U. S. C. 274, 311a)

CROSS REFERENCE: *Act of July 14, 1862, as amended.* (See § 3.1006.)

Persons Not Included

CROSS REFERENCE: *Public No. 2, 73d Congress.* (See § 3.2.)

§ 3.1013 *Public No. 141, 73d Congress, and No. 269, 74th Congress, and Reg. No. 1 (f) (38 U. S. C. ch. 12).* See § 3.2 and in addition: Contract surgeons, except as to pension under the act of July 14, 1862, as amended and reenacted. (Sec. 30, 48 Stat. 525, 49 Stat. 614; 38 U. S. C. 366, 368)

§ 3.1014 *Indian Wars.* (a) Civilian employees and others not specifically named in the act of March 3, 1927. See also § § 3.1003, 3.1009 and 3.1021.

(b) Members of the Confederate Army who served against Indians. See also § 3.1021. (Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108; 38 U. S. C. 381)

§ 3.1015 *Civil War; service pension.* (a) Acting assistant or contract surgeons.

(b) Civilian pilots.

(c) Provost marshals, deputy provost marshals or enrolling officers.

(d) Cadets in the Military Academy and midshipmen not on practice cruises.

(e) Voluntary substitute who served and was discharged in the name of the soldier.

(f) Civilian clerks in the Quartermaster's Department. (Sec. 1, 46 Stat. 529, 38 U. S. C. 274)

CROSS REFERENCE: *Act of July 14, 1862, as amended.* (See § 3.2.)

Computation of Service; Spanish-American War, Boxer Rebellion, or Philippine Insurrection

CROSS REFERENCE: *World Wars I and II.* (See § 3.59.)

§ 3.1017 *Public No. 2, 73d Congress.* (See also § 3.59.) (a) Service is exclusive of leave under G. O. 130, War Department. As to enlistments subsequent to August 12, 1898, participation in the Boxer Rebellion or the Philippine Insurrection must be shown. For service extending into or beyond the period of hostilities, see § 3.60.

(b) Without regard to length of service, any veteran of the Spanish-American War, Boxer Rebellion or Philippine Insurrection, as defined by the laws in force on March 19, 1933, who is over 62 years of age and who was on the pension rolls on March 20, 1933, is entitled to a pension in the amount of $15.00 monthly unless the amount of pension he was receiving on March 20, 1933, was less than $15.00 monthly, in which event he shall receive the lesser amount. A veteran not on the rolls on March 20, 1933, must have rendered the service required by paragraph (a) of this section. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.1018 *Public No. 141, 73d Congress, and No. 269, 74th Congress.* For service pension, service is to be computed only from the date of enlistment or the beginning of the war period, whichever is the later date. Service in the Moro Province before July 15, 1903, is pensionable, as to veterans only, whether the pensioner was on the rolls March 19, 1933, or filed claim subsequent to that date. Service is exclusive of unauthorized leaves of absence and furloughs enumerated in § 3.59, except that leave under G. O. 130, War Department, is included as pensionable service under the acts of May 1, 1926 and June 2, 1930. Time under arrest, in the absence of acquittal or permission to resign without trial and conviction (time for which the soldier or sailor was determined to have forfeited pay by reason of absence without leave), time spent in

desertion or while undergoing sentence of court martial, should be deducted. Time in a hospital, on sick furlough or as a prisoner by the enemy is included. Records of the War or Navy Department are conclusive with respect to military or naval service as the basis of a pension claim, unless changed by special act of Congress. Title to pension, except under the act of June 5, 1920, is conditioned upon service during the period of any one of the wars named (Spanish-American War, Boxer Rebellion, or Philippine Insurrection), and fragmentary periods of service in two or more of these activities, which combined comprise the aggregate 70 days or 90 days, will not suffice. (However, under Public No. 594, 76th Congress, approved June 11, 1940, continuous active service entered into during the war with Spain, the Philippine Insurrection, or the China Relief Expedition shall be included although part of such continuous service extented into either the Philippine Insurrection or the China Relief Expedition.) Under section 30, Public No. 141, 73d Congress, service on a vessel after August 12, 1898, is pensionable if the veteran was subject to orders requiring his disembarkation and participation in the Philippine Insurrection and military or naval service in the Philippine Insurrection or Boxer Rebellion is computed from the date of embarkation for the Philippine Islands or China. (Sec. 1, 44 Stat. 382, sec. 1, 46 Stat. 492, secs. 1, 30, 48 Stat. 8, 525, 49 Stat. 614, 54 Stat. 301; 38 U. S. C. 351a, 364, 365, 366, 368, 701)

§ 3.1019 *Veterans' Regulation No. 1 (f) (38 U. S. C. ch. 12).* There is no provision for pension for service of less than 90 days, unless discharge was for disability incurred in line of duty, and no entitlement to wartime rates, if enlistment was later than August 12, 1898, for disability incurred in service in Guam, Cuba, or Puerto Rico. An enlistment entered into in Guam, Cuba, or Puerto Rico is not pensionable under this section, even where the veteran was ordered to the United States and returned under orders, to one of the islands. Service on ships in water adjacent to these islands is included. (Sec. 30, 48 Stat. 525; 38 U. S. C. 366)

§ 3.1020 *Public No. 541, 75th Congress (Act of May 24, 1938).* Service is to be computed only from the date of enlistment or the beginning of the war period, whichever is the later date. All leaves of absence and furloughs under General Orders numbered 130, August 29, 1898, War Department, shall be included in determining the period of pensionable service. However, service in the Moro Province after July 4, 1902, and prior to July 15, 1903, may not be used as a basis for pension under this act nor will other than honorable separation from an enlistment beginning after July 4, 1902, deprive the veteran of pension. (52 Stat. 440; 38 U. S. C. 370)

§ 3.1021 *Indian wars.* (See also §§ 3.1003, 3.1009, and 3.1014) For service pension pursuant to the act of March 3, 1927, as amended, service of 30 days or more or the duration of a campaign cited in the act of March 4, 1917, even though such campaign was of less than thirty days' duration, is required in any military organization whether such person was regularly mustered into the service of the United States or not but whose service was under the authority or by the approval of the United States or any State or Territory in any Indian war or campaign, or in connection with, or in the zone of any active Indian hostilities in any of the States or Territories of the United States from January 1, 1817, to December 31, 1898, inclusive, the determination as to what constitutes the zone of active Indian hostilities to be made by the Administrator of Veterans' Affairs. The expression "active Indian hostilities" means actual hostilities such as necessitated the employment of the military arm of the State, Territory, or the United States in their suppression, and service in a military organization against Indians, without authority or even against orders of its Government, if subsequently approved either tacitly or openly, is pensionable. Service in an organization against Indian or white outlaws, or service in the Confederate Army against Indians is not pensionable, but service against Indians rendered by other troops of any of the States that seceded from the Union is included. Where the War Department is unable to locate a record of alleged service, other evidence may be admitted to prove that the requisite service was rendered, but a purported list of members, not filed with the Adjutant General of a State until a date remote from the period of the hostilities may not be accepted as genuine and a sufficient finding that a claimant rendered the required service. (Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108; 38 U. S. C. 381)

§ 3.1022 *Civil War.* (a) In determining the period of 90 days service within the meaning of the Civil War service acts, no deduction will be made on account of ordinary or veteran furlough. Deductions will be made for absence without leave, while in desertion, in confinement because of violation of military or naval regulations or under treatment in a hospital because of misconduct or an intentional self-inflicted wound, or otherwise absent for such reason. Service performed prior to muster into the Federal service is State service and not pensionable. Service of a draftee is computed only from the date he was accepted by the Board of Enrollment. Service of less than 90 days is included if discharge was for a disability incurred in the service in line of duty. (See § 3.1040 (b).)

(b) Enlistments in volunteer organizations (white or colored) entered into in loyal States on or before April 13, 1865, and in other States, the Territories, and the District of Columbia, on or before June 1, 1865, were enlistments for the Civil War, and service rendered thereunder (in volunteer organizations) is pensionable within the meaning of the service acts.

(c) Enlistments in volunteer organizations entered into in the loyal States after April 13, 1865, and in the other States, the Territories, and the District of Columbia after June 1, 1865, were not enlistments for the Civil War, and service rendered thereunder is not pensionable within the meaning of the service acts unless, first, it is shown to have had some connection with the suppression of the rebellion; or unless, second, the presumption arises that it had some connection by reason of the service being rendered in hostile territory; namely, the State of Tennessee prior to and including June 13, 1865; the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, and Arkansas, prior to and including April 2, 1866; or the State of Texas prior to and including August 20, 1866. When a soldier enlisted in a volunteer organization in a loyal State after April 13, 1865, but rendered service in a disloyal State, such service in the disloyal State need not have covered the period of 90 days if the total service was 90 days or more.

(d) Service in the regular establishment under an enlistment prior to April 12, 1861, is to be computed from April 12, 1861. Service rendered up to and including July 1, 1865, under enlistments in the regular Army, without regard to the date of enlistment, is pensionable under the service acts, but service rendered in the regular Army after that date, to be pensionable, must be shown to have had some connection with the suppression of the rebellion. If such service was rendered in the disloyal States named in paragraph (c) of this section, it is presumed to have been rendered in connection with the suppression of the rebellion and is pensionable under the acts named as long as the service rendered was in the disloyal States. Service rendered up to and including July 1, 1865, under enlistments in the Navy, is pensionable under the service acts, but service rendered after July 1, 1865, to be pensionable thereunder must be shown to have had some connection with the suppression of the rebellion. If such service was in waters adjacent to disloyal States, as mentioned in paragraph (c) hereof, it is presumed to have been in connection with the suppression of the rebellion and is pensionable under the acts named as long as the service rendered was on vessels in such waters. (Sec. 1, 46 Stat. 529; 38 U. S. C. 274)

§ 3.1023 *Special act.* A special act of Congress, reciting that a person is considered to have been mustered into the service on a named date and honorably discharged on a subsequently named date, is sufficient regardless of whether the War Department has any record of such service. A special act in specifying actual periods of presumed service, in the absence of a War or Navy Department record, is pensionable only at the rate provided therein.

§ 3.1024 *Service to date of disbandment or actual discharge.* (a) Section 4701, Revised Statutes, provides that the periods of service of all persons entitled to the benefits of the pension laws shall be construed to extend to the time of disbanding the organization to which they belonged or until their actual discharge for other cause than the expiration of the service of the organization.

(b) The word "construed" is held to mean "presumed" in the ordinary legal

acceptation of the term. This construction is applicable to all pension claims, including claims for increase and original claims under the service acts. The soldier is to be credited with all the time of service up to the date of discharge or date of disbandment. It is not required that he should show in the first instance where he was to the time of disbandment, but the presumption stated in the law shall be held to apply; however, should it appear in fact that he was not with his command or in the service, then the presumption would be overcome. (R. S. 4701; 33 U. S. C. 31)

JURISDICTION

§ 3.1025 *Jurisdiction of the claims division, central office.* Within the jurisdiction of the claims division, central office, including the central disability board, will be included claims for disability compensation, pension, and retirement pay of the following classes:

(a) Where there was any service prior to July 16, 1903.

(b) Where the veteran is an employee in either the classified or unclassified service or a member employee who has been continuously employed for ninety days in the Veterans' Administration. See § 3.12.

(c) Where rights have been forfeited under any act.

(d) Where the veteran is a claimant for retirement under section 5, Public No. 18, 76th Congress, as amended, except:

(1) Where all service was after July 15, 1903;

(2) Following the initial adjudication of a claim comprehended in subparagraph (1) of this paragraph and decentralization of such claim, the field office having jurisdiction thereover is authorized to complete all subsequent adjudication actions not requiring contact with the War Department relative to retirement, such as apportionments, adjustments under section 1, Public Law 662, 79th Congress. Claims requiring contact with the War Department or where there is doubt as to the proper action, will be referred to the director, veterans claims service, central office, for appropriate action.

(e) Where the veteran resides without the continental limits of the United States other than within the territory assigned to regional offices in Alaska, Hawaii, Puerto Rico and the Philippines.

(f) In cases under the jurisdiction of the division, claims under section 31, Public No. 141, 73d Congress, as amended by section 12, Public No. 866, 76th Congress and under paragraph 4, Part VII, Veterans' Regulation No. 1 (a), as amended (38 U. S. C. ch. 12).

(g) Emergency officers retirement as provided by § 3.350.

(h) In cases under the jurisdiction of the division, determination whether the veteran was insane at the time of commission of the offense resulting in discharge otherwise precluding entitlement to benefits.

(i) Where the applicant's entitlement to pension under the General Law, the act of 1862, including the amendments thereto, is an issue.

(j) Where the protection provided by Public No. 788, 74th Congress, relative to the General Law rate is for application.

(k) Where there is entitlement under the Revised Statutes. (See secs. 4756 and 4757 R. S.)

(l) Where there is entitlement pursuant to special acts.

(m) Residents of United States Soldiers Home, Washington, D. C.

(n) Claims involving sections 4 and 5, Public Law 144, 78th Congress, as amended by Public Law 622, 79th Congress.

(o) In cases under the jurisdiction of the division where retired persons, as contemplated by Public Law 314, 78th Congress, file application for monetary benefits under any of the laws administered by the Veterans' Administration.

(p) In cases under the jurisdiction of the division, determinations whether the character of discharge is a bar to benefits, including benefits under Titles II, III and V of Public Law 346, 78th Congress, and hospital treatment, domiciliary care, and out-patient treatment for service-connected disabilities, under Public No. 2, 73d Congress, as amended, in doubtful cases.

(q) In cases under the jurisdiction of the division, determinations, when required, whether disabilities are service connected and compensable for purposes of vocational rehabilitation.

(r) In cases under the jurisdiction of the division, determinations whether injury or disability for which discharged, where there was service of less than ninety days, was incurred in service in line of duty for the purposes of Titles II, III and V, Public Law 346, 78th Congress.

(s) Determining, upon proper request, service connection for the condition or conditions for which out-patient treatment only is requested.

(t) Applications for automobiles and other conveyances for disabled veterans filed by retired officers, Veterans' Administration employees and foreign residents under Public Law 663, 79th Congress.

(u) Any claim not otherwise under the jurisdiction of central office referred by competent authority for action. (Sec. 1b, 46 Stat. 1016, secs. 7, 8, 48 Stat. 9, 58 Stat. 230; 38 U. S. C. 9, 26c, 707, 708)

FILING OF CLAIMS AND SUPPORTING EVIDENCE

Application for Pension and Compensation

CROSS REFERENCES: *Informal claims based on service after April 20, 1898.* (See § 3.27)
Execution of papers in foreign country. See § 3.32.
Abandoned claims. (See § 3.28.)
When new and material evidence constitutes new claim. (See § 3.201.)

§ 3.1030 *Identification of beneficiaries under special acts.* If a beneficiary in a special act has no claim before the Veterans' Administration such beneficiary must file formal application before pension may be awarded. (Secs. 7, 8, 48 Stat. 9; 38 U. S. C. 707, 708)

PROOF OF RELATIONSHIP AND DEPENDENCY

Public No. 2, 73d Congress, Public No. 141, 73d Congress, as Amended, and Public No. 269, 74th Congress, as Amended

CROSS REFERENCES: *Child.* (See § 3.42.)
Mother or father. (See § 3.41.)
Proof of birth or relationship. (See § 3.46.)
Proof of marriage. See § 3.50.
Proof of death. (See § 3.55.)
Dependency. (See § 3.57.)
Validity of marriage. (See § 3.49.)
Validity of divorce. (See § 3.51.)

DETERMINATIONS AS TO BASIC ENTITLEMENT

§ 3.1038 *Enlistment.* (*See § 3.61.*) Validity of enlistment is a prerequisite to entitlement to pension or compensation of all classes.

§ 3.1039 *Type of discharge required.* (See § 3.64.)

(a) *Special act to correct military record.* Where a special act does not grant pension directly but gives the claimant a status so that he is eligible to apply for and be allowed a pension, he is in the same position as he would have been if he had served honorably. (26 Stat. 1432, sec. 3, 43 Stat. 1303, secs. 300, 1503, Stat. 286, 301, R. S. 4692, 4693; 38 U. S. C. 151, 152, 447, 693g, 697c)

CROSS REFERENCE: *Character of discharge and line of duty under Public No. 2, 73d Congress.* (See §§ 3.64 and 3.66.)

§ 3.1040 *Types of discharges for service pension (Spanish-American War, Boxer Rebellion, Philippine Insurrection, Civil War, and Indian Wars)*—(a) *Honorable discharge.* An honorable discharge is a prerequisite for service pension, including pension on the basis of Indian war service, such pension being based upon the fulfillment of a contract for service as contemplated by the soldier's enlistment, and a person discharged under other than honorable conditions for concealing his minority at time of enlistment is not entitled to such pension, except as provided in § 3.61 (b). Pension is not payable unless the veteran was honorably discharged from all periods of service in the particular war concerned, except as provided in § 3.1041

(b) *Discharge for disability.* Service pension is payable on the basis of Civil War service and on the basis of Spanish-American War service, including the Boxer Rebellion and the Philippine Insurrection (acts May 1, 1926, and June 2, 1930), if service was less than 90 days: *Provided,* The veteran was discharged for disability incurred in the service in line of duty. Such disability need not have been incurred during the period of the war but may have been incurred in the service during the same enlistment, prior to one of the wars named.

(c) *Character of discharge under the act of July 14, 1862, as amended.* A discharge from the service in which disabilities are alleged to have been incurred is essential to title under the act of July 14, 1862, as amended, but the character of discharge is not material unless a person is discharged or dismissed by reason of the sentence of a general court martial, or is discharged on the ground that he was a conscientious objector who refused to perform military duties or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities, or as a deserter, or in the case of an officer where his resignation is accepted for the good of the service. However, in the case of any such person, if it is established to the satisfaction of the Administrator that at the

time of the commission of the offense such person was insane, he shall not be precluded from benefits to which he is otherwise entitled under the laws administered by the Veterans' Administration. Veterans in receipt of pension or compensation on the date of the enactment of Public Law 346, 78th Congress, pursuant to the interpretation of prior laws, are not affected by the requirements of either section 300 or section 1503, Public Law 346, 78th Congress. (See § 3.1042.) (Sec. 1, 44 Stat. 382, 1361, sec. 1, 46 Stat. 492, 529, sec. 300, 58 Stat. 286, R. S. 4692, 4693; 38 U. S. C. 151, 152, 274, 364, 365, 381, 693g)

§ 3.1041 *Joint Resolutions of July 1, 1902, and June 28, 1906*—(a) *Civil War Veterans.* Prior to the Joint Resolution of July 1, 1902, pension for Civil War service was barred if the veteran had deserted from any period of service during or extending into the war, or if all service during the war was not honorable. The Joint Resolution of July 1, 1902, provides that any veteran of the Civil War who was honorably discharged from the last contract of service during the Civil War shall be considered as honorably discharged from all service during that war if he served faithfully for six months in the last enlistment and did not receive any bounty or gratuity, other than from the United States, by virtue of the last enlistment, in excess of that to which he would have been entitled if he had completed the prior contract which did not terminate honorably. This was amended by Joint Resolution of June 28, 1906, to include an honorable discharge from any subsequent service during the Civil War. The service of "not less than six months under any subsequent enlistment, appointment or commission" mentioned in section 2 of the Joint Resolution of June 28, 1906, is not limited to service of six months under one particular enlistment but means subsequent service of at least six months under one or more enlistments. The honorable discharge must have been from a subsequent enlistment and does not apply where the dishonorable discharge was from the last enlistment but the veteran was discharged honorably from a prior enlistment.

(b) *Subsequent service must have been faithful.* The Joint Resolutions of July 1, 1902, and June 28, 1906, do not apply where the subsequent service was not faithful; e. g., where the veteran deserted in the subsequent service, but was given an honorable discharge therefrom or where the charge of desertion in the subsequent enlistment was removed and an honorable discharge issued subsequent to the Civil War. A record of desertion is prima facie evidence that the entire service of the claimant was not faithful within the meaning of these acts and evidence designed to show that such record was erroneous must be filed in and considered by the Department in which the record was made. As a general proposition where a soldier's service was of such character that he is obliged to resort, years subsequent to the close of the war, to an application to the War Department under general remedial statutes in order to complete his record and to secure discharge, that fact necessarily implies that his entire service was not faithful.

(c) *Bounty.* The excess of bounty referred to in the Joint Resolutions of July 1, 1902, and June 28, 1906, is that bounty other than from the United States, actually received on account of that "subsequent" service, the length and character of which is invoked to cure the defect in "all previous contracts of service," under the terms of the acts. The fact that excess of bounty was received by reason of a still later service is immaterial.

§ 3.1042 *Desertion*—(a) *The act of April 26, 1898, as amended May 11, 1908.* Section 6 of the act of April 26, 1898, as amended by the act of May 11, 1908, provides that where a soldier deserts, all rights to disability pension are forfeited, whether desertion was in time of peace or war. This act is applicable to all laws reenacted by section 30, Public No. 141, and Public No. 269, 74th Congress. This provision is expressly limited to soldiers and has no application to sailors, marines or death pensioners. It is immaterial whether the service was terminated by an honorable discharge upon remission of sentence for the desertion after trial and conviction or that the proceedings were set aside for irregularity but desertion from an enlistment entered into subsequent to the service during which the injury was incurred or subsequent to the war during which the requisite service to convey entitlement to service pension was rendered, is not a bar to pension on the previous service. Conviction and sentence by court martial are not material but forfeiture for periods prior to June 22, 1944, will attach in case of desertion even where the soldier voluntarily surrenders, is restored to duty without a trial and was thereafter honorably discharged. An act of Congress, removing a charge of desertion, pursuant to which an honorable discharge was issued by the War Department, as of the date of the occurrence previously recorded as desertion, erases all effects of the desertion, and an act of Congress providing that in the administration of the pension laws an individual shall be considered as honorably discharged, but not specifically removing a charge of desertion, will entitle the person to a pension, if otherwise in order, notwithstanding the acts of April 26, 1898, and May 11, 1908, if the legislative history discloses that it was the intent to grant a pension. The act of April 26, 1898, does not apply to pension predicated on service which terminated prior to that date: *Provided*, That on and after the approval of Public Law 346, 78th Congress, June 22, 1944, where the veteran is restored to duty and subsequently honorably discharged, he may be awarded a pension under the renacted Spanish-American War laws, if otherwise entitled thereto.

(b) *Deserter's release.* The act of April 11, 1890, providing for release of deserters, which amended the 103d Article of the Rules and Articles of War, merely bars prosecution for desertion under military laws. It neither releases a soldier from his contract of service nor terminates his status as a deserter. His title to pension is nevertheless forfeited by the act of April 26, 1898.

(c) *Desertion while a minor.* The enlistment contract of a minor is not void but voidable. In order to void his enlistment on the ground of infancy he must have recourse to lawful methods, and desertion is not a lawful method. (Act of May 11, 1908, 26 Stat. 54, sec. 6, 30 Stat. 365, sec. 300, 58 Stat. 286; 38 U. S. C. 693g)

CROSS REFERENCE: *Forfeiture.* (See § 3.69.)

§ 3.1043 *No forfeiture under pension laws in force March 19, 1933.* Under the pension laws in effect March 19, 1933, including those reenacted by Publics No. 141, 73d Congress, and No. 269, 74th Congress, there is no provision for a forfeiture of disability pension other than section 6 of the act of April 26, 1898, as amended by the act of May 11, 1908, prior to July 13, 1943. However, from July 13, 1943, see the provisions of § 3.69 (d). (35 Stat. 110, sec. 4, 57 Stat. 555; 10 U. S. C. 905, 38 U. S. C. 728)

§ 3.1044 *Misconduct*—(a) *Section 30, Public No. 141, 73d Congress, and Reg. No. 1 (f)* (38 U. S. C. ch. 12). As to the so-called service acts as reenacted, pension is barred because of misconduct only if wilful, as defined in the precedents under the World War Veterans' Act, 1924, as amended. Carelessness does not constitute wilful misconduct.

(b) *Public No. 269, 74th Congress.* As to pension under the service acts reenacted by Public No. 269, 74th Congress, payment is barred only if disability resulted from vicious habits (see § 3.65 (b) (1), except that this restriction is not included in the act of June 2, 1930, under which there is no bar as to misconduct or vicious habits).

(c) *Indian wars.* Vicious habits do not constitute a bar under the act of March 3, 1944.

(d) *Civil War.* Misconduct or vicious habits do not constitute a bar under the act of June 9, 1930. (Sec. 1, 46 Stat. 492, 529, secs. 1, 2, 30, 48 Stat. 8, 9, 525, 49 Stat. 614, sec. 1, 58 Stat. 108; 38 U. S. C. 274, 365, 366, 368, 381, 701, 702)

CROSS REFERENCE: *Public No. 2, 73d Congress.* (See § 3.65.)

§ 3.1046 *Line of duty.* (See § 3.66). (a) "Line of duty" is a technical phrase which is defined in paragraph VIII, Veterans' Regulation No. 10 (38 U. S. C. ch. 12), as amended by Public No. 648, 75th Congress, approved June 16, 1938, and Public Law 439, 78th Congress.

(b) Findings of the service departments relative to the line of duty status of diseases and injuries will not be binding on the Veterans' Administration. (Sec. 4, 48 Stat. 9, 52 Stat. 754, 58 Stat. 752; 38 U. S. C. 704, ch. 12, note, 46 U. S. C. 672b)

SERVICE CONNECTION AND EVALUATION

Determinations of service connection

CROSS REFERENCES: *Jurisdiction of the central disability board.* (See § 3.1025.)
Policy as to cooperation with and assistance to veterans and beneficiaries. (See § 3.7.)
Physicians' statements and lay affidavits. (See §§ 3.30 and 3.31.)
Credibility of evidence. (See § 3.31 (c).)
Controlling policy and procedure. (See § 3.6.)

Amendments, reversals, and severance of service connection. (See § 3.9.)
Public No. 2, 73d Congress. (See § 3.77.)
Presumption of soundness. (See §§ 3.59 and 3.63.)
Chronic diseases. (See §§ 3.80 and 3.86.)
Natural progress under Veterans Regulation No. 1 (a) (38 U. S. C. ch. 12). (See § 3.100.)
Proximate results. (See § 3.101.)

§ 3.1055 *Public No. 141, 73d Congress.* (a) Determination of service connection in claims of veterans of the War with Spain, the China Relief Expedition (Boxer Rebellion), and the Philippine Insurrection, pursuant to Public No. 141, 73d Congress, is to be made on the basis of the act of July 14, 1862, as amended, and only as to injury sustained or disease contracted during the Spanish-American War, the Boxer Rebellion or the Philippine Insurrection, as defined in §§ 3.1000 (a), 3.1001 (a) and 3.1002 (a).

(b) As to disease contracted or injury incurred in the military or naval service subsequent to the termination of war periods the act of July 14, 1862, as amended, was not revived or reenacted by section 30, Public No. 141, 73d Congress.

(c) All ratings under section 30, Public No. 141, 73d Congress, will be terminated as of August 12, 1935, the day prior to the date of approval of Public No. 269, 74th Congress, which repealed section 30. (Sec. 30, 48 Stat. 525, 49 Stat. 614, R. S. 4692, 4693; 38 U. S. C. 151, 152, 366, 368)

§ 3.1056 *Public No. 269, 74th Congress.* (a) Under Public No. 269, 74th Congress, effective August 13, 1935, determination of service connection in claims of veterans of the War with Spain, the China Relief Expedition (Boxer Rebellion) and the Philippine Insurrection will be made on the basis of all laws in effect on March 19, 1933, granting pensions to veterans of the Spanish American War, including the Boxer Rebellion and the Philippine Insurrection.

(b) The phrase "all laws in effect on March 19, 1933," includes with respect to service connection, the act of July 14, 1862, and amendments.

(c) The act of July 14, 1862, as amended, was not revived or reenacted as to those cases in which the disease was contracted, or the injury was incurred in service subsequent to the Spanish American War (including the Philippine Insurrection or Boxer Rebellion), as defined in §§ 3.1000 (b), 3.1001 (b), and 3.1002 (b). (49 Stat. 614, R. S. 4692–4696; 38 U. S. C. 151–154, 368)

§ 3.1057 *Service prior to April 21, 1898.* (a) As to veterans of the Indian wars, Civil War, and peacetime service prior to April 21, 1898, determination of service connection will be made on the basis of the act of July 14, 1862, and amendments, pursuant to which compensation is payable only for injury or disease actually incurred or contracted (as distinguished from aggravated) in active military or naval service, in line of duty.

(b) Amendments to the basic act of July 14, 1862, provide that all applicants for compensation shall be presumed to have had no disability at the time of enlistment but that such presumption may be rebutted. (Act of March 3, 1885)

(c) Injuries are not accepted as established merely on a record of treatment in service, for the reason that they may or may not have been received in line of duty, but if shown by the service record as in line of duty, and the origin of the disease is so obscure as to preclude an assurance that it would have developed had the claimant remained a civilian, the doubt will be resolved in his favor. Acceptable evidence to show origin in service in line of duty shall always be based upon actual personal knowledge of the nature and extent of the injury as well as the circumstances under which the injury was incurred. (23 Stat. 362, 60 Stat. 524, R. S. 4692–4696; 38 U. S. C. 24, 151–154, 700)

Evaluation Under Public No. 2 and Public No. 141, 73d Congress

CROSS REFERENCES: *Effective date of 1933 Schedule.* (See §§ 3.148 and 3.149.)
Hospitalization and home treatment. (See § 3.165 (b) (2).)
Non-incapacitating degree. (See § 3.158 (b).)
Compensable rating based on two non-compensable conditions. (See § 3.156.)
Aggravation. (See § 3.159.)

Evaluation Under the Laws in Force on March 19, 1933, Which Were Not Repealed, as to Service Prior to April 21, 1898, and as Reenacted by Public No. 141, 73d Congress, and Public No. 269, 74th Congress

§ 3.1061 *Evaluation of disability.* As to disability resulting from injury or disease of service origin, evaluation will be made in accordance with the act of July 14, 1862, as amended (the General Law: sections 4692–4696, R. S., as amended), on the basis of the average impairment of earning capacity. Rating under the act of July 14, 1862, as amended, does not depend upon the ability of the individual veteran to perform manual labor. (Sec. 30, 48 Stat. 525, 49 Stat. 614, R. S. 4692–4696; 38 U. S. C. 151–154, 366, 368)

§ 3.1062 *General Law rates*—(a) *Rates fixed by or pursuant to law.* Rates of compensation under the act of July 14, 1862, as amended and as reenacted, for service-connected disability specified by or fixed pursuant to law follow:

Rates apply also to service other than during the S. A. W., including the B. R. and P. I., except for total disability of both hands or feet.	Rates under the "General Law" as amended and as reenacted by Pub. No. 269, 74th Cong.	Rates under Pub. Law 469, 78th Cong.	Adjusted rates under the "General Law" as amended and as reenacted by Pub. No. 141, 73d Cong., not applicable after Aug. 12, 1935
Loss of sight of both eyes	$125	$129.50	$93.75
Loss of both hands	100	104.50	75.00
Total disability of both hands	80	84.50	60.00
Total disability of both hands (S. A. W., B. R. and P. I. only)	100	104.50	75.00
Loss of both feet	100	104.50	75.00
Total disability of both feet	80	84.50	60.00
Total disability of both feet (S. A. W., B. R. and P. I. only)	100	104.50	75.00
Loss of 1 hand and 1 foot	100	104.50	75.00
Total disability in 1 hand and 1 foot	100	104.50	75.00
Loss of 1 hand or 1 foot and a portion of the other hand or foot	85	(1)	63.75
Loss of 1 hand or 1 foot	80	(1)	60.00
Total disability of 1 hand or 1 foot	80	(1)	60.00
Loss of both arms or both legs	125	129.50	93.75
Total disability of both arms or both legs	125	129.50	93.75
Loss of an arm at or above the elbow or a leg at or above the knee	90	(1)	67.50
Total disability of arm or leg	90	(1)	67.50
Regular aid and attendance	72	76.50	54.00
Frequent and periodical aid and attendance	50	(1)	37.50
Incapacity to perform manual labor	30	34.50	22.50
Disability equivalent to loss of hand or foot	24	(1)	18.00
Total deafness	40	(1)	30.00
Ankylosis of ankle	12	(1)	9.00
Ankylosis of wrist	12	(1)	9.00
Loss of sight of 1 eye	12	(1)	9.00
Loss of 1 eye	17	(1)	12.75
Loss of palm of hand and all fingers and thumb remaining	17	(1)	12.75
Loss of thumb, index, middle and ring fingers	17	(1)	12.75
Loss of thumb, index and middle fingers	17	(1)	12.75
Loss of thumb and little fingers	15	(1)	11.25
Loss of thumb, index and little fingers	17	(1)	12.75
Loss of thumb and index fingers	15	(1)	11.25
Loss of thumb	12	(1)	9.00
Loss of thumb and metacarpal bone	15	(1)	11.25
Loss of all the fingers, thumb and palm remaining	17	(1)	12.75
Loss of index, middle and ring fingers	17	(1)	12.75
Loss of middle, ring and little fingers	15	(1)	11.25
Loss of index and middle fingers	12	(1)	9.00
Loss of little and middle fingers	12	(1)	9.00
Loss of little and ring fingers	10	(1)	7.50
Loss of ring and middle fingers	10	(1)	7.50
Loss of index and little fingers	10	(1)	7.50
Loss of index finger	6	(1)	6.00
Loss of all the toes of 1 foot	15	(1)	11.25
Loss of great, second and third toes	12	(1)	9.00
Loss of great toe and metatarsal	12	(1)	9.00
Loss of great and second toes	12	(1)	9.00
Loss of great toe	8	(1)	6.00
Chopart's amputation of foot with good results	17	(1)	12.75
Pirogoff's modification of Syme's	17	(1)	12.75
Inguinal hernia which passes through the external ring	15	(1)	11.25
Inguinal hernia which does not pass through the external ring	12	(1)	9.00
Double inguinal hernia, each of which passes through the external ring	17	(1)	12.75
Double inguinal hernia, 1 of which passes through the external ring and other does not	15	(1)	11.25
Double inguinal hernia, neither of which passes through the external ring	12	(1)	9.00
Femoral hernia	15	(1)	11.25
Nearly total deafness of 1 ear	6	(1)	6.00

See footnote at end of table.

Rates apply also to service other than during the S. A. W., including the B. R. and P. I., except for total disability of both hands or feet.	Rates under the "General Law" as amended and as reenacted by Pub. No. 269, 74th Cong.	Rates under Pub. Law 469, 78th Cong.	Adjusted rates under the "General Law" as amended and as reenacted by Pub. No. 141, 73d Cong., not applicable after Aug. 12, 1935
Total deafness of 1 ear	$10	(1)	$7.50
Slight deafness of both ears	6	(1)	6.00
Severe deafness of 1 ear and slight of the other	10	(1)	7.50
Nearly total deafness of 1 ear and slight of the other	15	(1)	11.25
Total deafness of 1 ear and slight of the other	20	(1)	15.00
Severe deafness of both ears	22	(1)	16.50
Total deafness of 1 ear and severe of the other	25	(1)	18.75
Deafness of both ears existing in a degree nearly total	27	(1)	20.25

Degree of deafness listed above will be determined as follows:
Slight deafness of 1 ear; inability to hear ordinary conversation at 6 feet.
Severe deafness of 1 ear; inability to hear loud conversation at 3 feet.
Nearly total deafness of 1 ear; inability to hear the loudest distinct conversation at 1 foot.
Total deafness of 1 ear, inability to hear the loudest conversation.

[1] From June 1, 1944, the rate under Pub. Law 469, 78th Cong. is determined by ascertaining the rate under § 3.1062 (b) based upon the evaluation of the disability as provided thereby, computing 15 per centum of this amount, and adding this to the rates specified in § 3.1062 (a).

(b) *Disability not specified or fixed by or pursuant to law.* Disability resulting from disease or injury not covered by the foregoing table will be evaluated on the basis of the average impairment of earning capacity, in accordance with the following table of rates:

	Rates under the "General Law" as amended and reenacted by Pub. No. 269, 74th Cong.	Rates under Pub. Law 469, 78th Cong.	Adjusted rates under the "General Law" as amended and reenacted by Pub. No. 141, 73d Cong., not applicable after Aug. 12, 1935
No percent			
10 percent	$6	$6.90	$6.00
15 percent	8	9.20	6.00
20 percent or more but less than 25 percent	10	11.50	7.50
25 percent or more but less than 35 percent	12	13.80	9.00
35 percent or more but less than 50 percent	14	16.10	10.50
50 percent or more but less than 75 percent	17	19.55	12.75
75 percent or more but less than total	24	27.60	18.00
Total (100 percent)	30	34.50	22.50

The General Law Rates are not increased by Public Law 659, 79th Congress. (Sec. 30, 48 Stat. 525, 49 Stat. 614, 58 Stat. 797, R. S. 4692–4696; 38 U. S. C. 151–154, 366, 368, 471a–2)

§ 3.1063 *Combination.* (a) Combination of non-specific General Law rates: These rates may be combined by the process of addition of the monetary equivalents, but no payments may be made on a combination in excess of $19.55 monthly under Public Law 469, 78th Congress, unless the rate over $19.55 can be considered as analogous to a specific condition or to total incapacitation. Should the addition of two or more monetary equivalents result in a rate not specified above, the next higher will be paid provided the result equals or exceeds the mean of two rates.

(b) Specific rates may not be combined but payment should be made on the basis of the greater. (22 Stat. 453, 58 Stat. 797; 38 U. S. C. 165, 471a–2)

§ 3.1064 *Aggravation.* Mere aggravation in the service of a pre-existing disease is not compensable. (60 Stat. 524, R. S. 4694; 38 U. S. C. 153, 700)

§ 3.1065 *Effective dates of increases.* Increase in service-connected disability under the act of July 14, 1862, as amended and reenacted will be evaluated from date of receipt of acceptable evidence, medical or otherwise, showing increased disability, corroborated by an official physical examination, if deemed necessary. (Sec. 3, 21 Stat. 30; 38 U. S. C. 57)

§ 3.1066 *Decreases.* Decrease in disability under the act of July 14, 1862, as amended and reenacted, will be evaluated as of the date when definite improvement is shown. (Sec. 3, 21 Stat. 30; 38 U. S. C. 57)

Evaluation Under Public No. 269, 74th Congress

§ 3.1068 *Definition of disability.* (a) Disability without regard to service connection under Public No. 269, 74th Congress, will be evaluated in comparison with the degree of disability existing by reason of total inability to perform manual labor.

(b) Manual labor is defined as work of a useful character requiring physical or mental effort, but does not necessarily mean work such as work with a pick and shovel. (Sec. 1, 46 Stat. 492, 49 Stat. 614; 36 U. S. C. 365, 38 U. S. C. 368)

§ 3.1069 *Ratings; effective dates of increases.* (a) Evaluation will be made on the following bases: 10%, 25%, 50%, 75%, 100%, aid and attendance.

(b) Increases will be evaluated from date of receipt of acceptable evidence, medical or otherwise, showing increased disability, corroborated by an official physical examination, if deemed necessary. (21 Stat. 30, sec. 5, 46 Stat. 493; 38 U. S. C. 57, 365d)

§ 3.1070 *Reductions.* (a) Aside from reductions based on the express limitations contained in section 30, Public No. 141, 73d Congress, service act pension ratings in effect on March 19, 1933, in cases of veterans of the War with Spain, China Relief Expedition (Boxer Rebellion) and Philippine Insurrection may be reduced under the section and act cited on the basis of new and additional evidence added to the veteran's records subsequent to March 19, 1933, but such reductions shall be made only by reason of improvement in the aggregate disablement existing in each case, independent of misconduct. A diagnostic change as to one or more of the various conditions entering into rating consideration, without improvement in aggregate disablement, independent of misconduct, shall not warrant reduction of the rating percentage in effect on March 19, 1933.

(b) Reduction will not be made unless there is in the file convincing proof which, in accordance with the methods in effect on March 19, 1933, governing the determination of the inability to perform manual labor, pertaining to such cases, clearly shows a material change in the disabling condition. When it is apparent that the rating in force was based upon the estimated degree of inability of the individual to perform manual labor, and not upon an average basis, the object of rerating will be to reflect as accurately as possible, in the manner existent before March 20, 1933, the individual inability to perform manual labor, bearing in mind that, if this inability has been established, it is only exceptionally regained in later life, and practically never at the more advanced ages. Reductions in such ratings should not be effected routinely merely because of improvement as a result of operative or other hospital treatment, and are in order, in general, only when the evidence of record as to actual employment shows clearly and unmistakably that an ability to perform manual labor has been actually regained.

(c) Each rating constituting a reduction shall be accompanied by a detailed statement of reasons for the reduction, including a comparison in detail of the condition shown in the examination report or reports on which the rating percentage in effect on March 19, 1933, was based and those shown in the examination report or reports added to the veteran's record subsequent to March 19, 1933, on which the reduced rating is based. (21 Stat. 30, sec. 30, 48 Stat. 525; 38 U. S. C. 57, 366)

§ 3.1071 *Act of March 3, 1927, Indian Wars, as amended by Public Law 245, 78th Congress*—(a) *Definition of disability.* In claims of veterans of the Indian wars under Public No. 723, 69th Congress (act of March 3, 1927, as amended), evaluation of disability will be made without regard to service connection on the basis of aggregate permanent mental or physical incapacity, for the performance of manual labor, proportioned to the degree of inability to earn support.

(b) *Ratings.* Evaluation will be made on the following basis: 1/10, 1/4, 1/2, 3/4, total, and regular aid and attendance. (Sec. 1, 44 Stat. 1361, 58 Stat. 108; 38 U. S. C. 361)

§ 3.1073 *Act of June 9, 1930, Civil War.* In claims of veterans of the Civil War, under Public No. 323, 71st Congress (act of June 9, 1930), evaluation of disability will be made, without regard to service connection, on the basis of physical or mental disablement resulting in helplessness or blindness or need of regular aid and attendance of another person by reason of being nearly helpless or blind. Under this section evaluation will be made specifically as to whether the veteran is shown to be or not to be in need of regular aid and attendance of another person and determination in rating action will also be made as to the effective date, in the event need of regular aid and attendance is established. The effective date will be the date of inception of the requisite condition, as shown by the evidence, or June 9, 1930, whichever is the later date. (Sec. 1, 46 Stat. 529; 38 U. S. C. 274)

Aid and Attendance

CROSS REFERENCE: *Public No. 2, 73d Congress, Public No. 141, 73d Congress, and Public No. 269, 74th Congress, as amended.* (See § 3.176.)

§ 3.1080 *Pension laws in force on March 19, 1933, and as reenacted by Section 30, Public No. 141, 73d Congress, and Public No. 269, 74th Congress.* As to increase of pension of all classes based upon the need of regular aid and attendance, the increased rating shall be effective from the date of inception of the requisite condition, as shown by the evidence or the date of the act authorizing the payment, whichever is the later date. (Sec. 30, 48 Stat. 525, 49 Stat. 614, R. S. 4692–4696; 38 U. S. C. 151–154, 366, 368)

§ 3.1081 *Frequent and periodical aid and attendance.* (a) The rate of pension when a veteran is so disabled by reason of service-connected disease or injury as to require the frequent and periodical, though not regular and constant, personal aid and attendance of another person pursuant to the act of July 14, 1862, as amended, may be authorized when it is shown that the need for aid or attendance is a personal one and predicated upon the actual requirements of personal assistance from another person. It must be shown that there is need for aid at frequent and periodic intervals, such as assistance to the disabled person to dress and undress or bathe and keep ordinarily clean and presentable or retire and arise from bed or feed himself or attend to the wants of nature or dress inaccessible wounds or injuries or make periodic adjustments of prosthetic or orthopedic appliances, which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would not be able to adjust without aid, such as support belts, lacing at the back, etc.), or protect himself from hazards of dangers incident to his daily environment. If the evidence presented shows that the need of an attendant is occasional or precautionary, the increased rate of pension may not be awarded. The fact that a person takes rest periods daily, is under the supervision of a nurse, or has a physician in attendance, does not conclusively show that such person needs or requires the frequent and periodic aid and attendance of another person.

(b) Need for frequent and periodic aid and attendance must result from permanent service-incurred disability and not from temporary disability.

(c) Aid of another person required only during occasional adjustment of a steel leg brace does not warrant authorization of the rate of pension for frequent and periodic aid and attendance.

(d) Rating based upon frequent and periodic aid and attendance shall be made effective from the date of receipt of evidence showing entitlement thereto. (27 Stat. 149; 38 U. S. C. 175)

Combination of Ratings (See also § 3.155.)

§ 3.1082 *Peacetime and wartime disabilities.* A percentage rating made in accordance with § 3.1062 for disability connected with service prior to the Spanish-American War may be combined under the provisions of Veterans' Regulation No. 1 (a), Part IV (38 U. S. C. ch. 12) with a rating for disability connected with service during the Spanish-American War. (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

Claims and Rating Requirements

§ 3.1085 *Section 31, Public No. 141, 73d Congress, Section 12, Public No. 866, 76th Congress, and Reg. No. 1 (a), Part VII, Paragraph 4 (38 U. S. C. Ch. 12) Public No. 2, 73d Congress, as amended by Public Law 16, 78th Congress.* See §§ 3.5, 3.27, 3.121, 3.123 and 3.124. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, 57 Stat. 43; 38 U. S. C. 501a–1, 701)

CROSS REFERENCE: *Rates; World War service.* See § 3.245.

§ 3.1087 *Rates; Spanish-American War, Philippine Insurrection, and Boxer Rebellion service.* In claims of veterans with Spanish-American War, Philippine Insurrection or Boxer Rebellion service, as defined in Public No. 2 or Public No. 141, 73d Congress, regulations issued pursuant thereto, the compensation to be awarded will be in accordance with the rates provided in Veterans' Regulation No. 1 (a), Part I (38 U. S. C. ch. 12), and the Schedule for Rating Disabilities, 1945, or Public No. 269, 74th Congress, as amended, whichever is the greater monetary benefit. (Sec. 1, 48 Stat. 8, 49 Stat. 614, 60 Stat. 319, 524; 38 U. S. C. 368, 700, 701, 736)

§ 3.1088 *Rates; peacetime service.* In claims of veterans with peacetime service only subsequent to August 12, 1898, the compensation to be awarded will be in accordance with the rates provided in Veterans' Regulation No. 1 series, Part II, as amended, and the Schedule for Rating Disabilities, 1945. (Secs. 1, 4, 48 Stat. 8, 9, 60 Stat. 319, 524; 38 U. S. C. 700, 701, 704, 736)

§ 3.1089 *Rates; service prior to April 21, 1898.* In claims of veterans with service prior to April 21, 1898, including veterans of the Civil and Indian Wars, the compensation to be awarded will be in accordance with the rates provided in Veterans' Regulation No. 1 series, Part I or II, (38 U. S. C. ch. 12), dependent upon whether the service was wartime or peacetime, and the Schedule for Rating Disabilities, 1933, or in accordance with the rates provided by the act of July 14, 1862, as amended (the General law), or in accordance with the rates provided by the various service pension acts, whichever is the greater monetary benefit. (Secs. 1, 4, 48 Stat. 8, 9, 60 Stat. 524, R. S. 4692–4696; 38 U. S. C. 151–154, 700, 701, 704)

CROSS REFERENCES: *Combination with ratings for service-connected disability.* See § 3.124.

Jurisdiction under section 31, Public No. 141, 73d Congress, Section 12, Public No. 866, 76th Congress, and Reg. 1 (a), Part VII, Paragraph 4, (38 U. S. C. ch. 12) *Public No. 2, 73d Congress, as amended by Public Law 16, 78th Congress.* See §§ 3.5 and 3.1025 (f).

Determinations under section 31, Public No. 141, 73d Congress, Section 12, Public No. 866, 76th Congress, and Reg. 1 (a), Part VII, Paragraph 4 (38 U. S. C. ch. 12), Public No. 2, *73d Congress, as amended by Public Law 16, 78th Congress.* See § 3.123.

Direct service connection granted under Section 31, Public No. 141, 73d Congress, Section 12, Public No. 866, 76th Congress, and Reg. 1 (a), Part VII, Paragraph 4 (38 U. S. C. ch. 12), *Public No. 2, 73d Congress, as amended by Public Law 16, 78th Congress.* See § 3.245 (b).

Medical Examinations

§ 3.1095 *Medical examinations*—(a) *Examinations in original claims for pension or compensation.* See also §§ 3.76 and 3.185. In original claims for pension under Public No. 269, 74th Congress, examination will not be authorized unless the application is accompanied by evidence indicating the presence of a disability permanent in character. Where the application shows the claimant has attained a beneficial age, examination will not be authorized unless the application is accompanied by evidence indicating the claimant may be entitled by reason of disability to a pension in an amount greater than that paid on account of attained age.

(b) *Examinations in claims for increase of pension or compensation.* See § 3.186.

(c) *Re-examinations to be requested when necessary.* See § 3.185.

(d) *Examinations of employee-claimants.* Examinations of employees of the Veterans' Administration shall be made in a Veterans' Administration hospital or home or regional office elsewhere than at the place of employment except as otherwise approved by the chief, claims division. (48 Stat. 8, 509, 49 Stat. 614, sec. 12, 54 Stat. 1197; 38 U. S. C. 368, 473a, 501a–1, 701)

AWARDS, AMENDMENTS, AND DISCONTINUANCES

Original Awards

CROSS REFERENCE: *Public No. 2, 73d Congress.* See also § 3.212.

§ 3.1100 *Effective date pursuant to Reg. 1 (a) (38 U. S. C. ch. 12).* Pension pursuant to Veterans Regulation No. 1 (a), Part III, paragraph I (g) shall be awarded:

(a) Effective as of the date of receipt of a claim therefor if the veteran's name was not on the pension rolls on March 20, 1933.

(b) Effective as of the date of receipt of a claim therefor if the veteran attained the age of 62 years subsequent to the removal of his name from the pension rolls as the result of the review of his case under the act of March 20, 1933, and did not take action to revive the former claim prior to the attainment of his 63d birthday.

(c) Effective as of the date of his 62d birthday where the veteran attained the age of 62 years subsequent to the removal of his name from the pension rolls as the result of the review of his case under the act of March 20, 1933, but took action to revive the former claim prior to the attainment of his 63d birthday.

(d) Without the filing of a claim therefor, if his name was on the pension rolls on March 20, 1933, and he attained the age of 62 years prior to the completion of the review of his case under the act of March 20, 1933. (Secs. 1, 4, 48 Stat. 8, 9; 38 U. S. C. 701, 704)

§ 3.1101 *Effective date pursuant to Reg. 1 series, paragraph 1 (h) (38 U. S. C. ch. 12).* Pension pursuant to Part III, paragraph I (h) of Veterans' Regulation No. 1 series, shall be awarded:

(a) Effective as of the date of receipt of a claim therefor if the veteran's name was not on the pension rolls on March 20, 1933.

(b) Effective as of the date of receipt of a claim therefor where he attained the age of 55 years subsequent to the removal of his name from the rolls as the result of the review of his case under the act of June 16, 1933, and did not take action to revive the former claim prior to the attainment of his 56th birthday.

(c) Effective as of the date of his 55th birthday where he attained the age of 55 years subsequent to the removal of his name from the rolls as the result of the review of his case under the act of June 16, 1933, but took action to revive the former claim prior to the attainment of his 56th birthday.

(d) Without the filing of a claim therefor if his name was on the pension rolls on March 20, 1933, and he attained the age of 55 years prior to the completion of the review of his case under the act of June 16, 1933. (Secs. 1, 4, 48 Stat. 8, 9; 38 U. S. C. 701, 704)

§ 3.1102 *Effective date pursuant to Reg. 1 (c) (38 U. S. C. ch. 12).* Pension pursuant to Veterans' Regulation No. 1 (c), paragraphs 3 and 4, shall be awarded:

(a) Effective as of January 19, 1934, without the filing of a claim therefor if it is demonstrated that the required degree of disability existed on January 19, 1934.

(1) If the veteran's name was on the rolls on March 19, 1933, or January 19, 1934.

(2) If a claim for compensation or pension filed prior to January 19, 1934, had not been disallowed or abandoned prior to that date, and provided the claim was revived by written notice at any time prior to January 19, 1935.

(b) Effective as of the date of receipt of a claim therefor or the date upon which the required disability arose, whichever is the later, if not comprehended by paragraph (a) (1) or (2) of this section. (Secs. 1, 4, 48 Stat. 8, 9; 38 U. S. C. 701, 704)

§ 3.1104 *Section 30, Public No. 141, 73d Congress.* Pension pursuant to this section of Public No. 141, 73d Congress, which may not be awarded to continue beyond August 12, 1935, shall commence from the date of receipt of claim therefor when entitlement is otherwise shown, but not prior to March 28, 1934. In those cases which were on the rolls on March 19, 1933, or March 27, 1934, commencement shall be from March 28, 1934. (Sec. 30, 48 Stat. 525, sec. 2, 49 Stat. 614; 38 U. S. C. 366, 369)

§ 3.1105 *Adjusted rates.* Service pension under Public No. 141, 73d Congress, is payable at adjusted rates as follows:

	Act June 5, 1920, 90 days service	Act May 1, 1926, 90 days service or disability discharge	Act June 2, 1930, 90 days service or disability discharge	Act June 2, 1930, 70 days service
Disability:				
1/10	$9.00	$15.00	$15.00	$9.00
1/4	11.25	18.75	18.75	11.25
1/2	13.50	22.50	26.25	13.50
3/4	18.00	30.00	37.50	18.00
Total	22.50	37.50	45.00	22.50
Aid and attendance		54.00	54.00	37.50
Age:				
62	9.00	15.00	22.50	9.00
68	13.50	22.50	30.00	13.50
72	18.00	30.00	37.50	18.00
75	22.50	37.50	45.00	22.50

(Sec. 30, 48 Stat. 525, 38 U. S. C. 366)

§ 3.1106 *Veterans' Regulation No. 1 (f).* Pension pursuant to this regulation shall commence from the date of receipt of claim therefor when entitlement is otherwise shown, but not prior to February 8, 1935. In those cases which were on the rolls on March 19, 1933, or February 7, 1935, commencement shall be from February 8, 1935. For rates see § 3.1105. (Secs. 1, 4, 30, 48 Stat. 8, 9, 525; 38 U. S. C. 366, 701, 704)

§ 3.1107 *Public No. 269, 74th Congress*—(a) *Effective date.* Commencement shall be from August 13, 1935, or the date of claim, whichever is the later, when entitlement is otherwise shown, as to claims filed on or after March 20, 1933, and not finally adjudicated. Any claim filed subsequent to March 19, 1933, under Public No. 2 or Public No. 141, 73d Congress, disallowed or abandoned may, upon written notice from the claimant or his representative, be revived at any time prior to August 13, 1936, and when entitlement is otherwise shown, payments under the provisions of the act of August 13, 1935, may commence from the date of the act.

(b) *Public No. 541, 75th Congress.* Veterans' Administration Form 526b is prescribed as the form on which claims under this act will be filed. However, where there is already on file a formal application for service pension and benefits are being paid, any writing signed by the veteran or in his behalf, claiming increased pension, will constitute a valid application under this act. Pension on account of attainment of age of sixty-five years will be effective from the date of receipt of a claim filed on or after the attainment of the beneficial age and on or after May 24, 1938. The rate for regular aid and attendance will be payable from the date of receipt of a claim, executed on or after May 24, 1938, and after the requisite condition is shown to exist. (49 Stat. 614, 52 Stat. 440; 38 U. S. C. 368, 370)

§ 3.1108 *Rates of pension: Spanish-American War, Philippine Insurrection and/or Boxer Rebellion.* (a) Service pension is payable at rates as follows:

Item	Act of June 5, 1920, 90 days service (1)	Act May 1, 1926, 90 days service or disability discharge (3)	Act June 2, 1930, 90 days service or disability discharge (3)	Act June 2, 1930, 70 days service	Act May 24, 1938, 90 days service or disability discharge (4)	Act. Mar. 1, 1944, 90 days service or disability discharge
Disability:						
1/10	[1] $12.00	$20.00	$20.00	$12.00	----------	----------
	[2] 14.40	24.00	24.00	14.40	----------	----------
	[3] 17.28	28.80	28.80	17.28	----------	----------
1/4	[1] 15.00	25.00	25.00	15.00	----------	----------
	[2] 18.00	30.00	30.00	18.00	----------	----------
	[3] 21.60	36.00	36.00	21.60	----------	----------
1/2	[1] 18.00	30.00	35.00	18.00	----------	----------
	[2] 21.60	36.00	42.00	21.60	----------	----------
	[3] 25.92	43.20	50.40	25.92	----------	----------
3/4	[1] 24.00	40.00	50.00	24.00	----------	----------
	[2] 28.80	48.00	60.00	28.80	----------	----------
	[3] 34.56	57.60	72.00	34.56	----------	----------
Total	[1] 30.00	50.00	(3) 60.00	30.00	----------	(3) $75.00
	[2] 36.00	60.00	----------	50.00	----------	----------
	[3] 43.20	72.00	----------	60.00	----------	(3) 90.00
Aid and attendance	----------	[1] 72.00	(4) 72.00	50.00	(4) $100.00	----------
	----------	[2] 86.40	(4) 86.40	65.00	----------	----------
	----------	[3] 103.68	(4) 103.68	78.00	(4) 120.00	----------
Age:						
62	[1] 12.00	20.00	30.00	12.00	----------	----------
	[2] 14.40	24.00	36.00	14.40	----------	----------
	[3] 17.28	28.80	43.20	17.28	----------	----------
65	(1)	----------	----------	----------	(4) 60.00	(4) 75.00
	(2)	----------	----------	50.00	----------	----------
	(3)	----------	----------	60.00	----------	(4) 90.00
68	[1] 18.00	30.00	(4) 40.00	18.00	----------	----------
	[2] 21.60	36.00	(4) 48.00	50.00	----------	----------
	[3] 25.92	43.20	(4) 57.60	60.00	----------	----------
72	[1] 24.00	40.00	(4) 50.00	24.00	----------	----------
	[2] 28.80	48.00	(4) 60.00	50.00	----------	----------
	[3] 34.56	57.60	(4) 72.00	60.00	----------	----------

See footnotes at end of table.

Item	Act of June 5, 1920, 90 days service (1)	Act May 1, 1926, 90 days service or disability discharge (3)	Act June 2, 1930, 90 days service or disability discharge (3)	Act June 2, 1930, 70 days service	Act May 24, 1938, 90 days service or disability discharge (4)	Act. Mar. 1, 1944, 90 days service or disability discharge
Age—Continued						
75	[1] $30.00	$50.00	(3) $60.00	$30.00	----------	(3) $75.00
	[2] 36.00	60.00	----------	50.00	----------	----------
	[3] 43.20	72.00	----------	60.00	----------	(3) 90.00

[1] Rates prior to Sept. 1, 1946.
[2] Rates from Sept. 1, 1946; Public Law 611, 79th Cong.
[3] Rates from Sept. 1, 1947; Public Law 270, 80th Cong.

NOTE: The foregoing rates are subject to the provisions of § 3.255. Where a veteran is furnished hospital treatment, institutional or domiciliary care by the Veterans' Administration and is furnished with nursing or attendant's service, the award of pension will be the amount authorized by the rating decision or the attainment of beneficial age, exclusive of any additional amount on account of the need of regular aid and attendance. This rate of pension in such instances will be effective as of the beginning of the maintenance of the disabled veteran by the Veterans' Administration.

(1) While there was provision in the act of May 1, 1926, for increase to the rates provided in that act of persons being paid under the earlier act there are certain claims based upon fragmentary periods of service in two or more of the activities, namely, Spanish-American War, Philippine Insurrection, and (not or) the China Relief Expedition, the total of which is 90 days or more. Such service is treated as though it comprised a single campaign. These cases which do not meet the service requirements of the later acts are pensionable at the rates provided by the act of June 5, 1920, as amended.

(2) Increases from the rates provided by the act of May 1, 1926, to those provided by the act of June 2, 1930, are effective from the date of application. If a claim is encountered where the rates provided by the act of May 1, 1926, as amended, are in effect, the veteran will be notified of his right to file a claim for increase under the currently applicable law.

(3) The $60 rate for total disability and for age 75 years based upon 90 days service under the act of June 2, 1930, was increased to $75 monthly effective from April 1, 1944, by Public Law 242, 78th Congress. The $75 rate was not increased by Public Law 611, 79th Congress, but was increased by Public Law 270, 80th Congress.

(4) For effective date of increases under the act of May 24, 1938, see § 3.1107 (b). Veterans whose pension is based upon 90 days' service in the Moro Province between July 5, 1902, and July 15, 1903, are not entitled to the rates for age 65 or aid and attendance as provided by the act of May 24, 1938, as amended but the rates for 90 days' service as provided by the act of June 2, 1930, as amended, are applicable. (41 Stat. 982, 44 Stat. 382, 46 Stat. 492, 52 Stat. 440, 58 Stat. 107, secs. 1, 2, 3, 60 Stat. 863, sec. 1, Pub. Law 270, 80th Cong.; 38 U. S. C. 362, 364, 365, 365b, 365c, 370, 370e)

§ 3.1109 *Indian wars.* Pension or increased pension pursuant to the act of March 3, 1927, as amended by Public Law 245, 78th Congress, shall commence from the date of claim therefor or the date of entitlement, whichever is the later. The rate for regular aid and attendance as to persons applying for pension after March 3, 1944, is payable from the date of inception of the requisite condition as shown by the evidence, but not earlier than the date of the original application for pension under Public Law 245, 78th Congress. Public Law 398, 80th Congress, provides for a twenty percent increase in rates effective from March 1, 1948, but does not effect the foregoing provisions as to basic entitlement. (Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108, Pub. Law 398, 80th Cong.; 38 U. S. C. 381)

§ 3.1110 *Rates of pension: Indian wars.* Pension is payable at rates as follows:

Item	Rates on and after Sept. 1, 1937		Rates from date of claim filed on or after Mar. 3, 1944	
	To Feb. 29, 1948	From Mar. 1, 1948	To Feb. 29, 1948	From Mar. 1, 1948
Degree of Disability:				
1/10	$20.00	$24.00	$20.00	$24.00
1/4	25.00	30.00	25.00	30.00
1/2	35.00	42.00	35.00	42.00
3/4	45.00	54.00	50.00	60.00
Total	55.00	66.00	60.00	72.00
Regular aid and attendance	72.00	86.40	100.00	120.00
Age:				
62	25.00	30.00	30.00	36.00
65	----------	----------	60.00	72.00
68	35.00	42.00	----------	----------
72	45.00	54.00	----------	----------
75	55.00	66.00	----------	----------

NOTE: The foregoing rates are subject to the provision that the rate for regular aid and attendance may not be allowed while the veteran is being maintained by the Veterans' Administration and to the provisions of § 3.255.

(Sec. 1, 44 Stat. 1361, sec. 1, 58 Stat. 108, Pub. Law 398, 80th Cong.; 38 U. S. C. 381)

§ 3.1111 *Civil War.* Pension pursuant to the act of June 9, 1930, shall commence from the date of claim therefor or the date of entitlement, whichever is the later. (Secs. 1, 2, 46 Stat. 529, sec. 2, Pub. Law 270, 80th Cong.; 38 U. S. C. 274, 275)

§ 3.1112 *Rates of pension: Civil War.* (a) Pension is payable at rates as follows:

Minimum rate	Helpless or blind or so nearly helpless or blind as to require the regular aid and attendance of another person
$75.00 [1]	$100.00
$90.00 [2]	120.00

[1] Rates prior to Sept. 1, 1947.
[2] Rates from Sept. 1, 1947; Public Law 270, 80th Cong.

NOTE: The foregoing rates are subject to the provision that the rate for regular aid and attendance may not be allowed while the veteran is being maintained by the Veterans' Administration and to the provisions of § 3.255.

(b) The rate for Army nurses, under the act of August 5, 1892, as amended by the act of July 3, 1926, is $50.00 monthly, to September 1, 1947, and $60.00 monthly from September 1, 1947. (Secs. 1, 2, 46 Stat. 529, sec. 2, Pub. Law 270, 80th Cong.; 38 U. S. C. 274, 275)

§ 3.1113 *Rates payable for disability incurred in service prior to April 21, 1898.* Veterans of the regular establishment who served prior to April 21, 1898, who incurred disability in such service and who meet the other requirements of the act of July 14, 1862, as amended, are entitled to compensation at the rates provided in § 3.1062 (a) and (b). Effective July 1, 1940, such veterans are entitled to the rates of compensation prescribed by paragraph II of Part II of Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), as amended, or § 3.1062 (a) and (b), subject to the right of election. (Sec. 17, 48 Stat. 11, 54 Stat. 237, 60 Stat. 524; 38 U. S. C. 700, 717, 718, ch. 12 note)

§ 3.1114 *Peacetime service subsequent to April 20, 1898.* The protection afforded by Public No. 788, 74th Congress, will be extended to the claims of veterans who were on March 19, 1933, receiving compensation under the War Risk Insurance Act, as protected by section 602 of the World War Veterans' Act, 1924, as amended, for a disability incurred prior to April 6, 1917, where the veteran was also in the active service on April 6, 1917, or for a disability incurred subsequent to July 2, 1921, where such disability would also have been compensable on March 19, 1933, under the General Law (act of July 14, 1862), by awarding, effective July 1, 1936, seventy-five per centum of the rate payable under the General Law where that benefit is greater than the amount payable under Public No. 2, 73d Congress. In this class of cases a claim for compensation under the War Risk Insurance Act will be accepted for the purpose of awarding the benefits under Public No. 788, 74th Congress, as a claim for compensation under the General Law, and such claims will be forwarded to the director, veterans claims service, central office. (48 Stat. 8, 49 Stat. 614, 1910, 60 Stat. 524; 38 U. S. C. 368, 700, 701, 703a)

§ 3.1115 *Act of July 14, 1862, as amended.* Commencement shall be from the date of filing application under which disability is first shown to exist to a ratable degree. (49 Stat. 614, R. S. 4692–4696; 38 U. S. C. 151–154, 368)

§ 3.1116 *Act of April 3, 1939 (Public No. 18, 76th Congress), and act of September 26, 1941 (Public Law 262, 77th Congress.)* Commencement shall be from the date determined by the Secretary of War, or by someone designated by him in the War Department. (Sec. 5, 53 Stat. 557, 55 Stat. 733; 10 U. S. C. 456, 456a, 38 U. S. C. 12)

Amended Award

CROSS REFERENCE: *Increases.* (See also §§ 3.214 and 3.216.)

§ 3.1117 Under the laws providing compensation for persons who served prior to April 21, 1898, the effective date of an award of increased compensation because of increased disability or need of frequent and periodical attendance will

be from the date of receipt in the Veterans' Administration of the evidence by which the condition warranting the increase is shown to exist, but not earlier than the date of claim therefor nor prior to the date of enactment of the law upon which the benefit is based. Under the laws reenacted by Public No. 269, 74th Congress, the effective date of an award of increased disability will be from the date of receipt in the Veterans' Administration of the evidence by which the condition warranting the increase is shown to exist, but not earlier than the date of claim therefor nor prior to the date of reenactment of the law upon which the benefit is based; increased pension because of need of regular aid and attendance will be from the date of inception of the requisite condition, as shown by the evidence, or the date of the act authorizing the payment, whichever is the later date. (Secs. 2, 4, 46 Stat. 492, 493, 49 Stat. 614, 60 Stat. 524; 38 U. S. C. 365a, 365c, 368, 700)

§ 3.1125 *Automatic increase.* The acts of May 1, 1926, and June 2, 1930, contain no provision for the automatic increase of a pension allowed under the act of July 14, 1862, as amended, and one who is not on the pension roll under the so-called service acts must establish entitlement to pension under these acts before he can be allov ed payments thereunder, which shall commence from the date of filing claim. (Sec. 5, 46 Stat. 493, 49 Stat. 614; 38 U. S. C. 365d, 368)

§ 3.1126 *Application of act of June 2, 1930.* In those claims in which pension was being paid on March 19, 1933, at the rates provided in the act of May 1, 1926, pension may be awarded at the rates provided in the act of June 2, 1930, from the date of application for increase but not prior to March 28, 1934. (Sec. 5, 46 Stat. 493, 49 Stat. 614; 38 U. S. C. 365d, 368)

§ 3.1127 *Attained age.* Increase on account of attained age will be effective from the birthday on which the age is attained but not prior to the date of the act granting the benefit. (Sec. 5, 46 Stat. 493, 49 Stat. 614; 38 U. S. C. 365d, 368)

§ 3.1128 *Claim required for transfer from General Law rates to service pension rates.* In those claims in which compensation was being paid on March 19, 1933, at the rates provided in the act of July 14, 1862, as amended, service pension may be awarded under Public No. 269, 74th Congress, at the rates provided in the act of June 2, 1930, from the date of application but not prior to August 13, 1935. (49 Stat. 614, 60 Stat. 524; 38 U. S. C. 368, 700)

CROSS REFERENCE: *Failure to report for examination shall be considered as an abandonment of a claim for increase.* See § 3.251 (b).

Where the basic right to entitlement has been barred. See § 3.214 (c).

§ 3.1135 *Section 30, Public No. 141, 73d Congress; Public No. 269, 74th Congress; Indian wars; Civil War; and peacetime prior to April 21, 1898.* (a) The act of December 21, 1893, requiring due notice of not less than 30 days of the decision to annul, vacate, modify, or set aside, on the basis of evidence in file when the original determination was made, an award of pension, was reenacted by section 30 of Public No. 141, 73d Congress, and Public No. 269, 74th Congress, and is for application to pension payable pursuant to section 30, Public No. 141, 73d Congress, and Public No. 269, 74th Congress, as well as pension payable for service prior to April 21, 1898.

(b) The act of December 21, 1893, does not apply where the claimant is shown to be without entitlement to pension before the delivery of the initial check in payment under the award, nor to suspensions, reductions or terminations which would normally be effected upon the happening of a contingency which in itself under existing law affects or terminates pension rights, such as death, re-entry into the active military or naval service, remarriage of a widow or mother, forfeiture (including O. N. A. C.), admission into a Veterans' Administration hospital or center, or State or United States Soldiers Home, nor to temporary suspensions to guardians or others in connection with any guardianship action.

(c) Notice of reduction, suspension or termination will be given the pensioner by registered letter containing a full and true statement of the reasons necessitating such action. It will be stated in the letter that the pensioner will be given a period of thirty days (sixty days to pensioners in foreign countries) from the date of receipt of the letter by him within which to show cause why the action contemplated should not be taken. The pensioner will be informed that any evidence submitted must be duly sworn to before some officer authorized to administer oaths for general purposes. (See also § 3.32.) If reply is not received within the period designated in the notice, as shown by the date appearing on the returned registered receipt, the pension will be reduced, suspended or terminated as the case may be, effective on the last day of the month in which the reduction, suspension or termination is approved. If reply is received within the designated period, it will be carefully considered to determine whether cause has been shown for receding from the contemplated action. If the contemplated action is not receded from, the pension will be reduced, suspended or terminated as in cases where no reply is received, provided that no reduction, suspension or termination will be effective prior to the last day of the month in which the designated period expires. In any event the pensioner will be informed of the action taken. (Sec. 3, 28 Stat. 18, sec. 30, 48 Stat. 525, 49 Stat. 614; 38 U. S. C. 56, 366, 368)

CROSS REFERENCES: *Suspension for failure to report for examination.* See §§ 3.251 and 3.266.

Suspension for failure to return questionnaire. See § 3.292.

Information to be furnished veterans of all decisions. See § 3.7.

§ 3.1140 *Restoration and renewal.* (*See also §§ 3.266, 3.267, 3.286, and 3.293.*) Section 4719, R. S., which is for application to pension payable under the laws reenacted by Public No. 269, 74th Congress, and for service during Indian and Civil Wars and peacetime prior to April 21, 1898: *Provided,* That the pensioner's name should be stricken from the rolls because of the pensioner's failure after three years to claim his pension. For restoration there must be filed evidence specifically accounting for the failure to claim the pension, and evidence showing the continuity of the disability on account of which pension was allowed, unless the injury or disease was of static nature. The reasons for failure to claim for the intervening period must be satisfactorily shown and it must also be shown that the right to pension had not legally terminated in some of the ways or for some of the causes specified or by necessary implication included in the pension laws as terminating pension. (49 Stat. 614, R. S. 4719; 38 U. S. C. 53, 368)

CROSS REFERENCE: *Determination of continuance of dependency pursuant to Section 400, Public No. 844, 74th Congress.* See § 3.286.

§ 3.1141 *Fiduciary awards.* (a) The disability pension or compensation payable to a minor or a person mentally incompetent under the former pension laws, Public No. 2, 73d Congress; Public No. 78, 73d Congress; Public No. 141, 73d Congress; Public No. 269, 74th Congress, or retirement pay, may be paid to the guardian, curator or conservator, if one be appointed, or to the person otherwise legally vested with the care of the claimant or his estate, or when payments have been suspended or withheld from a guardian, to a person having actual custody of the minor or incompetent, in accordance with the provisions of section 21 of the World War Veterans' Act, 1924, as amended by Public No. 262, 74th Congress, and section 2, Public Law 144, 78th Congress, and section 1 (B), Public Law 662, 79th Congress, subject to §§ 3.276, 3.310, and 3.315.

(b) In the case of an incompetent veteran having no guardian, payment of compensation, pension, or retirement pay may be made in the discretion of the Administrator to the wife of such veteran for the use of the veteran and his dependents. See §§ 3.275 (a) and 14.201 of this chapter.

(c) The pension due or becoming due any person who is a patient at St. Elizabeth's Hospital will be paid to a guardian of such person in accordance with the general practice applicable to the appointment and recognition of guardian. The pension payable under section 1, Public Law 662, 79th Congress, to a veteran who has no wife, child, or dependent parents, and who is a patient at St. Elizabeth's Hospital, will be paid through means of an institutional award if there be no guardian, following § 3.276. Pension payable to dependents of veterans who are patients at St. Elizabeth's Hospital will be paid only to a guardian or conservator of such dependent, except that awards now being paid to the superintendent thereof will be continued while such dependent remains a patient.

(d) Benefits due minor or incompetent adult indians. (See § 3.275 (b).) (Sec. 1, 49 Stat. 607, sec. 1, 60 Stat. 908; 38 U. S. C. 450, 739, ch. 12 note)

CROSS REFERENCE: *Institutional awards.* See § 3.276.

§ 3.1145 *Special acts.* When the rate, commencement and duration of a pen-

sion allowed by special act are fixed by such act, they are not subject to be varied by the provisions and limitations of the pension laws but when not thus fixed the rate and continuance of the pension is subject to variance in accordance with the pension laws. Commencement shall date from the passage of the special act. (R. S. 4720; 38 U. S. C. 28)

CROSS REFERENCE: *Agents and attorneys.* See §§ 14.626 and 14.663 of this chapter.

Restrictions

CROSS REFERENCES: *Foreign residence.* See § 3.11.

Computation of salary. See §§ 3.228 and 3.229.

Combat injury. See § 3.67.

Explosion of an instrumentality of war. See § 3.68.

Income. See § 3.228.

§ 3.1163 *Public No. 2, 73d Congress.* Income in excess of the statutory maximum is a bar to the payment of pension under Veterans' Regulation No. 1 (a), Part III (38 U. S. C. ch. 12), except under paragraph 1 (g). (Sec. 1, 48 Stat. 8; 38 U. S. C. 701)

§ 3.1164 *Section 30, Public No. 141, 73d Congress, and Reg. No. 1 (f) (38 U. S. C. ch. 12).* Income itself is not a bar, but non-exemption from Federal income tax for the preceding year precludes pension through December 31, 1934. (Sec. 1, 4, 30, 48 Stat. 8, 9, 525; 38 U. S. C. 366, 701, 704)

§ 3.1166 *Economy reductions* — (a) *Indian wars.* Ten per centum from July 1, 1933, to June 30, 1934; five per centum from July 1, 1934, to March 31, 1935.

(b) *Civil War.* Same as paragraph (a) hereof. (These percentage reductions apply to the amount of the pension awarded and are to be applied before the application of reduction because of residence in a State or National Home.)

(c) *Special acts and emergency officers retirement pay.* Fifteen per centum from July 1, 1933, to January 31, 1934; ten per centum from February 1, 1934, to June 30, 1934; and five per centum from July 1, 1934, to March 31, 1935. (Sec. 1, 45 Stat. 735, sec. 3, 15, 48 Stat. 9, 307; 38 U. S. C. 581, 703)

CROSS REFERENCES: *Concurrent payment of two pensions.* See § 3.296.

Concurrent with naval pension allowance. See § 3.296(d).

§ 3.1171 *Concurrent with special acts.* Where a pension is granted by a special act, which fixes the rate and commencement, the rate thereunder cannot be increased nor can any other pension be paid, in the absence of the veteran's election, unless the special act expressly states that the pension granted thereby is in addition to pension which the pensioner is entitled to receive under any public pension law. (R. S. 4720; 38 U. S. C. 28)

CROSS REFERENCES: *Concurrent with Civil Service retirement annuity.* See § 3.301.

Concurrent with military or naval (including Fleet Reserve) retirement pay. See § 3.300.

Concurrent with death pension. See § 3.296.

Where pension laws in force March 19, 1933, as reenacted, are involved. See § 3.296.

Right of election. See also § 3.302.

§ 3.1181 *Maintenance by Veterans' Administration.* Reductions in service pension while a veteran is being maintained by the Veterans' Administration as mentioned in §§ 3.1108, 3.1110, and 3.1112, will be continued during furloughs or other temporary absences for periods of less than thrity days, unless discharged without readmission in which event the award will be adjusted, if otherwise in order, effective as of the day the veteran left the institution. See § 3.256. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

CROSS REFERENCES: *Adjustments of awards.* See § 3.256.

Admissions for examination or observation. See § 3.259.

Public No. 2, 73d Congress, Reg. 1 (f) (38 U. S. C. ch. 12), and Public No. 141, 73d Congress. See § 3.255.

Public No. 269, 74th Congress, and Public No. 541, 75th Congress. See § 3.255.

Indian War, Civil War, and peacetime prior to April 21, 1898. See § 3.255.

§ 3.1188 *Special acts.* Pension payable under special acts is subject to reduction pursuant to § 3.255. (Sec. 1, 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 3.1189 *Reduction based upon maintenance in State Homes; U. S. Soldiers Home, Washington, D. C.; and U. S. Naval Home*—(a) *Public No. 269, 74th Congress.* See §§ 3.255 and 3.1181. (b) *Indian wars.* See § 3.1110. (c) *Civil War.* See § 3.1112. (49 Stat. 614, sec. 1, 60 Stat. 908; 38 U. S. C. 363, 739, ch. 12 note)

CROSS REFERENCES: *Discontinuance because of maintenance of insane veteran.* See §§ 3.255 and 3.267.

Interpretation of phrase "being furnished hospital treatment." See § 3.258.

Adjudication under prior legislation. See §§ 3.341 to 3.347.

Apportionment

§ 3.1221 *Public No. 18, 76th Congress (act of April 3, 1939), and Public Law 262, 77th Congress (act of September 26, 1941).* Retirement pay under these acts may not be apportioned unless the veteran is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof. See § 3.317. (49 Stat. 614, sec. 5, 53 Stat. 556, sec. 1, 60 Stat. 908; 10 U. S. C. 369a, 38 U. S. C. 368, 739, ch. 12 note)

CROSS REFERENCE: *Effective date of apportionments.* See § 3.316.

Discontinuance of apportionments; effective dates. See § 3.317.

Apportionment. See §§ 3.310 to 3.317.

Appeals

CROSS REFERENCES: *Appeals.* See §§ 3.328 to 3.333 and §§ 19.0 to 19.5 of this chapter.

Adjudication of claims involving compensation or pension based upon new and material evidence presented after prior disallowance. See § 3.201.

Appeals entered prior to March 20, 1933. See § 3.343.

Emergency Officers Retirement Claims

CROSS REFERENCE: *Emergency officers retirement claims.* See §§ 3.350 to 3.359.

PROVISIONAL REGULATIONS

§ 3.1500 *Procurement of automobiles and other conveyances for disabled veterans.* (a) Total cost, $1,600.

(1) The total sales price of the delivered conveyance, including the following, will not exceed $1,600:

(i) Cost of conveyance within Office of Price Administration ceilings.

(ii) Cost of special attachments and devices, if any, deemed necessary by the state or other proper licensing agency or a Veterans' Administration contact representative in States of South Dakota, Wyoming, or Louisiana, to operate the vehicle in a manner consistent with his own safety and the safety of others.

(iii) Any tax which is reflected in total sales price. (A payment, such as for state or municipal license plates, will not be included in the total sales price.)

(iv) Equipment such as radio, heater, etc., should the veteran desire such equipment.

(2) New or used conveyances costing more than $1,600. In no case will the Veterans' Administration assume responsibility for payment of $1,600 as part of the sales price. The total sales price must not exceed $1,600.

(3) Special attachments and devices. Such special attachments and devices as are deemed necessary to the safe and lawful operation of the conveyance will be listed in sections IVa or IVb, Application Form, and must be installed in the conveyance prior to delivery.

(4) Payment for new or used car to be made to seller only. Under the provisions of Public Law 663, the eligible applicant will not be reimbursed for a conveyance, new or used, which he has already obtained. Payment will be made to the seller only in all cases, regardless of whether arrangement for purchase was made prior or subsequent to the enactment of Public Law 663.

(b) Policy on license. (1) Public Law 663 specifically states that "no veteran shall be given an automobile or other conveyance under the provisions of this paragraph until it is established to the satisfaction of the Administrator that such veteran will be able to operate such automobile or other conveyance in a manner consistent with his own safety and the safety of others and will be licensed to operate such automobile or other conveyance in the state of his residence or other licensing authority."

(2) In States which have operator's license laws. The Veterans' Administration will assume the responsibility of furnishing State, local, or other proper licensing agencies information regarding the applicant's disability. This information will be entered in section III, application form, by the regional office adjudication division or claims division, veterans' claim service, central office except in such cases as it is deemed advisable to submit the information, which clearly is of a confidential nature, under separate cover to the above agencies. It is the veteran's responsibility to obtain an operator's license if he does not have one, and to present this license, together with his application form, Veterans' Administration form 4502, to a local or other proper licensing agency for execution of Section IVa, "Certificate".

(3) States which do not have operator's license laws. In the States of South Dakota, Wyoming and Louisiana a local Veterans' Administration contact repre-

sentative will determine whether in his opinion the veteran is able to operate the conveyance safely with the aid of special attachments and devices. For the purpose of such determination he may consult with and secure the opinion of the chief medical officer, adjudication officer, chief, vocational rehabilitation and education officers or any other staff officer. The adjudication division in such cases will furnish the Veterans' Administration contact representative, under separate cover, a statement of any information of a confidential nature as to the veteran's physical or mental status, it deems necessary. Section IVb of Veterans' Administration form 4502 will be executed by a local Veterans' Administration contact representative rather than section IVa in these cases.

It is to be understood that under the language of the act the administrative determination that the veteran will be able to operate such automobile or other conveyance does not impose any liability on the employee making the determination or the Federal Government. (Pub. Law 663, 79th Cong., Title I, sec. 101, 60 Stat. 915, 38 U. S. C. 252) [Insts. 1 and 1 (a), Pub. Law 663, 79th Cong.]

§ 3.1501 *Assistance to certain veterans in acquiring specially adapted housing which they require by reason of their service-connected disabilities*—(a) *Processing of applications*—(1) *Availability and execution of application.* VA Form 4555 will be furnished to the veteran, or his representative, upon request. The application should be executed by the veteran and forwarded direct to the regional office where his claims folder is located. If no claim has been filed for benefits from the Veterans' Administration, the application should be forwarded to central office, Veterans' Administration, Washington 25, D. C.

(2) *Jurisdiction to execute certificate of eligibility.* Jurisdiction to execute VA Form 4555a, Certificate of Basic Eligibility, is vested solely in the claims division, veterans' claims service, central office. Therefore, when an application is received by a regional office or center it should, unless the veteran is hospitalized at the time of making application, be immediately attached to the claims folder and transferred to central office. In the excepted class, the upper portion of VA Form 4555b, Certificate of Medical Feasibility, should be executed before the application and principal claims folder are forwarded to central office. Central office will retain jurisdiction over the claims folder until the specially adapted housing applied for by the veteran has been furnished and the transaction is closed or the claim has been disallowed, at which time the folder will be decentralized.

(3) *Conditions precedent to execution of certificate of basic eligibility.* (i) Subsection (g), section 1, Title I, Public No. 2, 73d Congress, approved March 20, 1933, as amended, grants benefits under Public Law 702, 80th Congress, to any person who served in the active military or naval service of the United States who is entitled to compensation under the provisions of Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), for permanent and total service-connected disability due to spinal-cord disease or injury with paralysis of the legs and lower part of the body, subject to the provisions and limitations of Veterans' Regulation 1 (a), as amended, Part IX.

(ii) It will be noted that benefits are not restricted to World War II veterans nor to veterans of wartime service. It is only necessary that the veteran be entitled to compensation under Veterans' Regulation 1 (a), as amended, for disability incurred in, or aggravated by, service on or after April 21, 1898.

(iii) Permanent and total disability due to spinal-cord disease or injury with paralysis of the legs and lower part of the body is defined as paralysis of both lower extremities produced by lesion of the spinal-cord resulting from disease or injury thereof, such as to preclude locomotion without aid of braces, crutches, canes, or a wheelchair, accompanied by paralysis of the sphincters of anus and bladder. Physical re-examination of a veteran may be ordered when in the discretion of the Central Disability Board the most recent report of physical examination on file is not considered sufficient to portray the present degree of his disability for the purpose of Public Law 702, 80th Congress.

(iv) (*a*) If the veteran is found to be eligible, the certificate of basic eligibility will be executed, and the application will be referred to the department of medicine and surgery for consideration of the question of the veteran's medical feasibility.

(*b*) In the event the chief, claims division, or his designate, finds that he cannot execute the certificate of basic eligibility, he will prepare a letter to the veteran over the name of the director, veterans' claims service, listing the reasons for disapproval of the application and advising him of his right to appeal.

(*c*) In the event that consideration of the claim in the claims service will be delayed, such as obtaining examination or information from the service department, the veteran will be notified of the reasons for delay.

(4) *Jurisdiction to execute certificate of medical feasibility.* Jurisdiction to execute Veterans' Administration Form 4555b, Certificate of Medical Feasibility, is vested solely in the chief medical director, or his designate. When the file is referred to the department of medicine and surgery if the certificate of the examiners has not previously been executed, as provided in paragraph (a) (2) of this section, the chief medical director, or his designate; will arrange for an examination.

(5) *Conditions precedent to execution of certificate of medical feasibility.* (i) In general, a certificate of medical feasibility will be issued to an eligible applicant except when the health or future well-being of the applicant would be further jeopardized by his occupancy of a "specially adapted house" or because discharge from the hospital is medically contraindicated.

(ii) When the applicant is hospitalized in a Veterans' Administration hospital or center and is suffering from a service-connected disability due to spinal-cord disease or injury with paralysis of the legs and the lower part of the body, the manager will appoint a board which will include the chief of service responsibile for the patient, a neurologist, a urologist, and a physiatrist for the purpose of examining the applicant and for the preparation of Veterans' Administration Form 4555b.

(iii) When an applicant with the condition set forth in paragraph (a) (5) (ii) of this section is not currently undergoing hospitalization, the examination and report referred in subdivision (ii) of this subparagraph will be accomplished at the nearest Veterans' Administration hospital, center, or regional office having a qualified urologist, neurologist, and physiatrist on its staff.

(iv) When an applicant with a condition as set forth in paragraph (a) (5) (ii) of this section is currently undergoing hospitalization in a non-Veterans' Administration hospital or is confined to his home and is unable to travel, the manager of the nearest Veterans' Administration hospital or regional office having a qualified urologist, neurologist, and physiatrist on its full-time or consulting staffs will detail a team including these specialists for the purpose of performing the examination and completing the report referred to in subdivision (ii) of this subparagraph.

(v) The report of the examining team with whatever supporting data are considered necessary to uphold the recommendation will be forwarded to the chief medical director who will issue a certificate of medical feasibility in appropriate cases.

(6) *Action to be taken when certifications of eligibility and medical feasibility have been approved.* When the certificate of basic eligibility and medical feasibility are certified favorably, the folder will be referred to the loan guaranty service which will notify the veteran of the action taken and furnish him with a supplemental application, Veterans' Administration Form 4555c, and appropriate descriptive information as to the procedure to be followed in obtaining the financial assistance authorized by Public Law 802, 80th Congress. (Instruction 1, Pub. Law 702, 80th Cong.)

§ 3.1502 *Presumption of service-connection for chronic and tropical diseases*—(a) *Provisions of section 1, Public Law 748.* Section 1, Public Law 748, 80th Congress, amends Veterans' Regulation 1 (a) (38 U. S. C. ch. 12) to provide that:

(1) If the conditions of subparagraph (c), paragraph I, Part I, are met and subject to the limitations thereof, the following chronic diseases, in addition to those listed in § 3.86 and the following tropical diseases, will be considered as having been incurred in wartime service, if manifest to a degree of 10 percent or more within 1 year from the date of separation from active wartime service or within 1 year after the pertinent date prior to which a disability must have been incurred as provided in Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), whichever is the earlier.

(i) *Chronic diseases.*

Bronchiectasis.
Calculi of the kidney, bladder, or gall bladder.
Cirrhosis of the liver.

Coccidiomycosis.
Osteomalacia.
Scleroderma.
Raynaud's disease.
Tumors of the peripheral nerves.
Ulcer peptic (gastric or duodenal).

(ii) *Tropical diseases.*

Cholera.	Onchocerciasis.
Dysentery.	Oroya fever.
Filariasis.	Dracontiasis.
Leishmaniasis.	Pinta.
Leprosy.	Plague.
Loiasis.	Schistosomiasis.
Malaria, including black water fever.	Yaws.
	Yellow fever.

(2) The resultant disorders or diseases originating because of therapy, administered in connection with the above-cited tropical diseases or as a preventative of these diseases, will be considered as having been incurred in service if the conditions set forth in paragraph (a) of this section are met.

(3) Section 1, Public Law 748, 80th Congress, also provides that service incurrence will be established under subparagraph (a), paragraph I, Part I, Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), for any of the above-cited tropical diseases when shown to exist at a time when standard and accepted treatises indicate that the incubation period of the diseases commenced during active service.

(b) *Provisions of section 2, Public Law 748.* Section 2, Public Law 748, 80th Congress, amends Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), Part II, paragraph I, as amended, by adding a new subparagraph (d) thereto, providing that:

(1) Where a person served in the military or naval service for 6 months or more, was honorably discharged therefrom, and one of the tropical diseases listed below becomes manifest to a degree of 10 percent or more within 1 year from date of separation from service, such tropical diseases shall be deemed to have been incurred in active service for the purposes of Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), Part II, paragraph I (a), unless shown by clear and unmistakable evidence to have had its inception prior or subsequent to such service. The tropical diseases encompassed by the legislation are:

Cholera.	Onchocerciasis.
Dracontiasis.	Oroya fever.
Dysentery.	Pinta.
Filariasis.	Plague.
Leishmaniasis.	Schistosomiasis.
Leprosy.	Yaws.
Loiasis.	Yellow fever.
Malaria, including black water fever.	

(2) The resultant disorders or diseases originating because of therapy administered in connection with the tropical diseases listed in subparagraph (1) of this paragraph or as a preventative of these diseases will be considered as having been incurred in service if the conditions set forth in paragraph (b) (1) of this section are met.

(3) Section 2, Public Law 748, 80th Congress, also provides that service incurrence will be established under subparagraph (a), paragraph I, Part II, Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), for any of the tropical diseases listed in subparagraph (1) of this paragraph when shown to exist at a time when standard and accepted treatises indicate that the incubation period commenced during active service.

(c) *Rebuttal of presumption of service-connection.* The expression "clear and unmistakable evidence" appearing in Veterans' Regulation 1 (a), Part II, paragraph I (d), shall be construed to be synonymous with the expression "affirmative evidence to the contrary" contained in Veterans' Regulation 1 (a), Part I, paragraph I (c). As to tropical diseases incurred in either wartime or peacetime service, the fact that the veteran had no service in the tropics or in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption. The record must be negative as to inception prior or subsequent to service, and residence during the year following this service must not have been in the tropics or in a region where the particular disease is endemic. It is further necessary in disability claims that the conditions other than malaria be properly diagnosed on Veterans' Administration examination. The known incubation period for such diseases should be used as a factor in the rebuttal of service-connection, that is, to show inception prior or subsequent to active service.

(d) *Effective dates of awards and evaluations.* The effective dates of awards and evaluations will be in accordance with the provisions of controlling regulations: *Provided,* That in no event will benefits under Public Law 748, 80th Congress, be awarded prior to the date of enactment thereof. It should be borne in mind that benefits may be in order prior to the date of enactment of Public Law 748, 80th Congress, when the requirements of § 3.95 as to peptic ulcer and § 3.102 as to amebic dysentery, bacillary dysentery, filariasis (Bancroft's type), leishmaniasis, including kala-azar, schistosomiasis, trypanosomiasis, yaws, and malaria, are met. (Instruction 1, Pub. Law 748, 80th Cong.)

§ 3.1503 *Instructions relating to adjustment of awards under Public Law 876, 80th Congress.* (a) Public Law 876, 80th Congress, approved July 2, 1948, is quoted as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective the first day of the first month following the passage of this Act, paragraph II of part II of Veterans' Regulation Numbered I (a), as amended, is amended to read as follows:

II. For the purposes of part II, paragraph I (a) hereof, if the disability results from injury or disease, the compensation shall be equal to 80 per centum of the compensation now or hereafter payable for the disability, had it been incurred in or aggravated by active military or naval service during a period of war service as provided in part I of this regulaton.

(b) Adjustments under this enactment are effective August 1, 1948, and will be, as far as possible, automatically made from the finance records without individual adjudications. This adjustment includes those cases wherein payments are being made based on disabilities incurred in, or aggravated by, service other than in time of war under Part II, Veterans' Regulation I (a), as amended (38 U. S. C. ch. 12), and which are based only on the regular rates shown in paragraph (c) of this section. Automatic adjustments will not be made in those cases receiving wartime rates under Public Law 359, 77th Congress; Public Law 788, 74th Congress; the General Law (act of July 14, 1862); nor on cases involving statutory increases.

(c) The rates of compensation provided by Public Law 876, 80th Congress, are as follows:

Percent	Old rate	New rate
10	$10.35	$11.04
20	20.70	22.08
30	31.05	33.12
40	41.40	44.16
50	51.75	55.20
60	62.10	66.24
70	72.45	77.28
80	82.80	88.32
90	93.15	99.36
100	103.50	110.40

Automatic adjustments will be made by finance activities only on those cases being paid at the above "old rates."

(1) If the disabled person, as the result of service-incurred disability, has suffered the anatomical loss or loss of use of one foot or one hand, or blindness of one eye having only light perception, the rates of compensation provided above shall be increased by $33.60 per month; and in the event of anatomical loss or loss of use of one foot, or one hand, or blindness of one eye having only light perception, in addition to the requirement for any of the rates specified in subparagraphs (l) to (n), inclusive, set forth in subparagraph (2) of this paragraph, the rate of compensation shall be increased by $33.60 per month for each such loss or loss of use but in no event to exceed $288.00 per month.

(2) Where entitlement under Part II, paragraph II (l) to (o) is established, the rate of compensation will be as follows:

Subparagraph (l)	$192.00
Subparagraph (m)	225.60
Subparagraph (n)	254.40
Subparagraph (o)	288.00
Subparagraph (p)	[1]

[1] Present intermediate rates will be increased from $195.75 to $208.80, $211.50 to $225.60, $225.00 to $240.00.

The above rates are basic rates and do not reflect any allowances for dependents as provided by section 2, Public Law 877, 80th Congress.

(d) In automatically adjusting the accounts of veterans whose awards have been apportioned, including special apportionments, the increased amount will be prorated among the payees in accordance with the existing apportionment.

(e) In cases where an institutional award has been authorized, any increase in the veteran's award will be deposited in funds due incompetent beneficiaries, provided deposits are being currently made into this fund; otherwise such adjustment will be accomplished by award action. Where there is an institutional award and the balance is being paid to a guardian or other fiduciary, the increased amount will be paid to the guardian or fiduciary.

(f) The increased rates authorized by Public Law 876, 80th Congress, will be effective from August 1, 1948. In new or reopened awards where the effective date of entitlement is prior to August 1, 1948, the former rates will apply to that date and the new rates from August 1, 1948. If the award shows entitlement only from or after August 1, 1948, the new rates will be applicable from the beginning date of the award. When adjusting awards pursuant to this instruction, there will be entered on VA Form 8–553 a notation specifying Public Law 876, 80th Congress, as authority for the award. (Instruction 1, Pub. Law 876, 80th Cong.)

§ 3.1504 *Instructions relating to awards of additional compensation for a dependent or dependents.* (a) For the purposes of Public Law 877, 80th Congress, approved July 2, 1948, the following instructions are issued:

(1) Section 1 provides "That any person entitled to compensation at wartime rates for disability incurred in or aggravated by active service as provided in part I, or paragraph I (c), part II, Veterans' Regulation Numbered 1 (a), as amended, or the World War Veterans' Act 1924, as amended, and restored with limitations by Public Law 141, Seventy-third Congress, March 28, 1934, as amended, and whose disability is rated not less than 60 per centum, shall be entitled to additional compensation for dependents in the -- monthly amounts" set forth in subparagraph 4 of this paragraph. Section 1 includes veterans of the Spanish American War, the Philippine Insurrection, the Boxer Rebellion, World War I, World War II, and also those of the regular establishment entitled to compensation at wartime rates under the provisions of Public Law 359, 77th Congress.

(2) Section 2 provides "That any person entitled to compensation at peacetime rates for disability incurred in or aggravated by active service as provided in paragraph II, part II, Veterans' Regulation Numbered 1 (a), as amended, except paragraph I (c) thereof, and whose disability is rated not less than 60 per centum, shall be entitled to additional compensation for dependents in the -- monthly amounts" set forth in subparagraph 4 of this paragraph. Section 2 includes veterans of the regular establishment other than those entitled to wartime rates of compensation under Public Law 359, 77th Congress.

(3) Section 3 provides that "The additional compensation for a dependent or dependents * * * shall not be payable to any veteran during any period he is in receipt of an increased rate of compensation or of subsistence allowance on account of a dependent or dependents under any other law administered by the Veterans' Administration: *Provided*, That he may elect to receive whichever is the greater." For example, a veteran entitled to additional amounts of compensation under the act would receive such rates plus the rate of subsistence allowance for a veteran without dependents under Public Laws 16 or 346, 78th Congress, or his present compensation, without additional compensation provided by the act, plus the subsistence allowance rate for self and dependent, whichever is the greater.

(4) *Rates of additional dependency compensation*—(i) *Veteran rated totally disabled.*

	Wartime	Peacetime
Wife, but no child	$21.00	$16.80
Wife, 1 child	35.00	28.00
Wife, 2 children	45.50	36.40
Wife, 3 or more children	56.00	44.80
No wife, 1 child	14.00	11.20
No wife, 2 children	24.50	19.60
No wife, 3 or more children	35.00	28.00
Dependent parent or parents, each (in addition to above amounts)	17.50	14.00

(ii) If, and while, a veteran is rated partially disabled, but not less than 60 percent, the amount of additional compensation for dependents shall be in an amount having the same ratio to either the applicable wartime or peacetime rate as the determined degree of disability bears to total disability; thus, for example, where a 60 percent disability evaluation, based on wartime service, is in effect and the veteran has a wife but no child, 60% of $21.00, i. e., $12.60 will be authorized as additional dependency compensation; under identical circumstances, where a peacetime rate, only, is in order, 60 percent of $16.80, i. e., $10.08, will be authorized. When the percentage rating is other than multiples of 10 percent under Public Law 141, 73d Congress, the exact percentage will be used in the computations.

(iii) Where presumptive service connection is in order under section 27, Public No. 141, 73d Congress, although only 75 percent of the war-time rates is payable for the basic disability compensation, the full additional compensation provided in subdivisions (i) and (ii) of this subparagraph is allowable.

(5) *Effective date*—(i) *In original claim.* Where the veteran asserts on his application for disability compensation that he has a wife, child or children or dependent parent, he will be informed of the necessity of submitting satisfactory evidence of relationship and in the case of a parent or parents, of dependency, and that until such evidence is received in the Veterans' Administration additional compensation for the dependents will not be authorized. Pending receipt of the evidence the veteran will be paid as a single person, provided, however, that where the Veterans' Administration Form 8–526 shows the veteran and his wife are separated or a child or children are not in his custody, or where the veteran and his wife have been previously married, the award will be apportioned on the basis of the appropriate family status and the apportioned share for the wife, child or children withheld until receipt of the necessary evidence. If satisfactory evidence of relationship and dependency is received within one year from the date of request therefor, additional compensation will be authorized effective in accordance with the date of receipt application for disability compensation but in no event prior to September 1, 1948, the effective date of Public Law 877, 80th Congress. If such evidence is received after one year from the date of request therefor, the effective date of additional compensation for dependents will be the date of the receipt by the Veterans' Administration of the evidence showing entitlement thereto.

(ii) *In claim for increase.* Generally, the effective date of an increase based on a dependent will be the date the evidence establishing the relationship and dependency is received in the Veterans' Administration. However, where evidence of relationship and dependency is furnished within three months after September 1, 1948, the effective date of Public Law 877, 80th Congress, in a case where there is of record a claim for or specific reference to dependents, payment of additional compensation for the dependent will be authorized from that date, but in no event earlier than that date. Action to authorize increased compensation on account of dependents will not be taken in any case until the proof of such relationship and dependency is received.

(6) *Apportionments.* The basic disability compensation, plus additional compensation for dependents provided by Public Law 877, 80th Congress, where the service connected disability or disabilities are 60 percent or more disabling, is subject to apportionment in accordance with the provisions of §§ 3.310–3.317. The additional compensation for dependents will be reserved or paid as an apportioned award to a wife, child or dependent parent when the conditions are the same as those set forth in §§ 3.311 (c), (d), 3.312 (a) and (b) (1). Where apportionments are involved and subsistence allowance and compensation or pension are being received concurrently, the provisions of § 21.93 of this chapter are for application.

(7) *Institutional awards.* In cases where an institutional award has been authorized and no guardian has been appointed, none of the increases on account of dependents provided by Public Law 877, 80th Congress, will be reflected in the institutional award but such increases will be paid to the apportionee or apportionees in the full amount which is payable on his or their account. If a guardian has been appointed and is providing for the veteran's dependents, the increase will be paid to him. (Instruction 1, Pub. Law 877, 80th Cong.)

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AUTHORITY: §§ 4.0 to 4.207 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11, 11a, 426, 707. Statutes giving special authority are cited in parentheses at the end of affected sections.

FILING OF CLAIMS AND SUPPORTING EVIDENCE

§ 4.0 *Application for death benefits*—(a) *Formal claims.* A specific claim on the form prescribed by the Administrator of Veterans' Affairs must be filed by the widow, child or children and/or dependent mother or father applying for pension or compensation or by the claimant for accrued benefits. A claim for compensation under the General Law based on service prior to April 21, 1898, must be executed before a notary public or other officer authorized to administer oaths for general purposes, or before an employee of the Veterans' Administration to whom authority to administer oaths has been delegated by the Administrator. In the event the claimant's application is not complete at the time of original submission, the Veterans' Administration will notify the claimant of the evidence necessary to complete the application and if such evidence is not received within one year from the date of request therefor, pension or compensation may not be paid by virtue of that application (Veterans' Regulation No. 2 (d), Part I, par. I (a) (2)) (38 U. S. C. ch. 12); *Provided,* That a claim for pension or compensation filed by a widow or by the next friend or guardian of a child or by a parent will also be considered as a claim for any accrued amount due: *Provided further,* That a claim filed by a widow in which additional pension or compensation is claimed on account of a child or children in her custody, who herself does not have title, will be accepted as a valid claim on behalf of the child or children.

(b) *Informal claims.* The provisions of § 3.27 of this chapter are for application under any law authorizing the payment of death pension or death compensation where the claim is based upon service rendered on or after April 21, 1898 (sec. 1, Pub. Law 144, 78th Cong.).

(c) *New and material evidence.* For the purposes of any law authorizing the payment of death pension or death compensation based on service rendered on or after April 21, 1898, new and material evidence relating to the same factual basis as that of a finally disallowed claim shall be accepted as a claim in determining the commencing date of an award, when such evidence or accompanying communication meets the requirements of an informal claim. (38 U. S. C. ch. 12, Veterans' Reg. 2 (d), Part I, par. I (a) (3), sec. 1, Pub. Law 144, 78th Cong.) See §§ 3.201 and 3.205 of this chapter. (17 Stat. 566, 567, secs. 1, 2, 27 Stat. 272, secs. 9, 20, 48 Stat. 10, 309; 38 U. S. C. 42, 151, 152, 709, 722)

CROSS REFERENCES: *Appeals.* See Part II, Veterans' Reg. No. 2 series (38 U. S. C., ch. 12), and § § 3.328 to 3.333 of this chapter.

Execution of papers in a foreign country. See § 3.32 of this chapter.

Written and oral testimony to be under oath; administration of oath by employees. See § 3.30 of this chapter.

§ 4.1 *General Law, application and scope; service act, definition*—(a) *General Law; application and scope.* The term "General Law" includes all those laws commencing with the act of July 14, 1862, relating to the payment of pensions based on disability or death due to service and in line of duty, incurred since March 4, 1861, excepting World War legislation and the veterans' regulations issued pursuant to the act of March 20, 1933. The General Law is presently effective to include all service rendered prior to April 21, 1898; and in cases based on service in the War with Spain, Boxer Rebellion or Philippine Insurrection, to include July 4, 1902.

(b) *Service Act; definition.* The term "Service Act" means any public act of Congress granting pension because of service alone, or because of service and disability or age or death; under which it is not requisite that the injury, disease or death shall have been the result of service.

DEFINITIONS OF RELATIONSHIP

§ 4.2 *General law.* For the purposes of the general law the following definitions of relationship shall govern in the adjudication of claims for death compensation.

(a) *Widow.* The term "widow" shall mean a person who was married to the veteran at any time prior to the death of the veteran. As to awards approved on or after March 1, 1944, based on service rendered on or after April 21, 1898, continuous cohabitation as described in § 4.16 must be established. (Public Law 242, 78th Congress, act of March 1, 1944.) In claims based on service rendered prior to April 21, 1898, continuous cohabitation to date of death of the veteran is required in marriages entered into subsequent to March 2, 1899, unless the marriage was entered into prior to or during service. (30 Stat. 1380.)

(b) *Child.* (1) The term "child" shall mean a legitimate child under the age of sixteen. Children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate (section 4704 R. S.). State laws as to legitimacy are not applicable. The payment of compensation may be further continued after the age of 16 to or for a child who was insane, idiotic or otherwise physically or mentally helpless at the date of attaining the age of 16 years and the helpless condition exists at the date of filing claim. Payments of compensation continue during the period of helplessness. Marriage is not a bar to the payment of compensation to a child under the age of 16 years, or to a helpless child under an award approved prior to April 1, 1944. As to awards approved on or after April 1, 1944, compensation may not be paid to a helpless child who has married (Pub. Law 280, 78th Cong.) (See § 4.84.)

(2) For the purposes of the General Law as reenacted by Public No. 269, 74th Congress, the term "child" shall mean the same as in subparagraph (1) of this paragraph including a child as defined in § 4.14 (c): *Provided,* That payment of pension to or for a child entitled solely as a result of the definition contained in § 4.14 (c) may not be made for any period prior to July 13, 1943 (Pub. Law 144, 78th Cong.).

(c) *Mother-father.* (1) The term "mother" or "father" shall mean a natural mother or father of the veteran or mother or father of the veteran through legal adoption if, when adopted, the child becomes to all legal intents and purposes the child of the adoptive parents. The father must have been legally married to the mother of the veteran on whose account claim is made.

(2) For the purposes of the general law as reenacted by Public No. 269, 74th Congress, the term "mother" or "father" shall mean the same as in subparagraph (1) of this paragraph, including a mother or father as defined in § 4.14 (d): *Provided,* That payment of compensation to or for a parent entitled solely as a result of the definition contained in § 4.14 (d) may not be made for any period prior to July 13, 1943 (Pub. Law 144, 78th Cong.).

(Sec. 10, 17 Stat. 570, sec. 1, 22 Stat. 345, secs. 1, 3, 26 Stat. 18, 30 Stat. 1380, sec. 1, 39 Stat. 1199, sec. 2, 44 Stat. 1362, secs. 1, 7, 8, 57 Stat. 554, 555, 556, sec. 4, 58 Stat. 107, 186; 38 U. S. C. 37, 44–47, 49, 75, 174, 191, 192, 202, 364h, 375, 381a, 727, ch. 12 note)

§ 4.3 *Peacetime service subsequent to April 20, 1898.* For the purposes of adjudicating claims for death compensa-

tion under Public No. 2, 73d Congress (act of March 20, 1933), as amended, the following definitions of relationship shall govern:

(a) *Widow.* The term "widow" shall mean a person who was married to the veteran prior to the expiration of ten years subsequent to his discharge from the enlistment during which the injury or disease, on account of which claim is being filed, was incurred (Veterans' Regulation No. 10 (b), par. 1, (38 U. S. C. Ch. 12)), and, as to awards approved on or after October 1, 1948, who lived continuously with him from the date of marriage to the date of his death, as provided in § 4.16.

(b) *Child.* The term "child" shall mean the same as defined in § 4.14 (c). (Pub. Law 144, 78th Cong.)

(c) *Parent; father; mother.* The term "parent", "father" and "mother" shall mean the same as defined in § 4.14 (d). (Pub. Law 144, 78th Cong.) (Sec. 4, 48 Stat. 9, secs. 1, 7, 8, 57 Stat. 554, 555, 556, secs. 2, 4, 58 Stat. 107, 797; 38 U. S. C. 364a, 364h, 704, 727, Ch. 12 note, Pub. Law 762, 80th Cong.)

§ 4.4 *Indian wars.* For the purposes of the acts of March 4, 1917 (39 Stat. 1199), and March 3, 1927 (44 Stat. 1361), as amended, the following definitions of relationship shall govern in the adjudication of claims for death pension:

(a) *Widow.* (1) The term "widow" shall mean a person who was married to the veteran prior to March 4, 1917. However, the $60 rate provided for in the act of March 3, 1944, as amended, is payable only when the unremarried widow was the wife of the veteran during his Indian war service (Public Law 245, 78th Congress and Public Law 398, 80th Congress). (See § 4.80.) Continuous cohabitation to date of death of the veteran is required in marriages entered into subsequent to March 2, 1899. (30 Stat. 1380.) (See § 4.16.)

(2) As to claims filed under Public Law 245, 78th Congress, after March 3, 1944, the term "widow" shall mean a person as defined in subparagraph (1) of this paragraph or a person who:

(i) Was married to the veteran ten or more years prior to the date of his death;

(ii) Lived with the veteran continuously from the date of marriage to the date of his death, as provided in § 4.16;

(iii) Is 60 years of ago or over;

(iv) Has not remarried;

(v) Is in dependent circumstances. In determining dependency, the criteria outlined in § 3.57 of this chapter for determining the dependency of a parent shall be applied. (Pub. Law 245, 78th Cong.)

(b) *Remarried widow.* The term "remarried widow" shall mean a person who was married to the veteran prior to March 4, 1917, and who otherwise meets the requirements of paragraph (a) (1) of this section and whose subsequent or successive marriage or marriages has or have been dissolved either by death of the husband or husbands or by divorce without fault on her part (44 Stat. 1361). A remarried widow has no title under the provisions of Public Law 245, 78th Congress (act of March 3, 1944).

(c) *Child.* The term "child" is as defined in § 4.2 (b) (1). (30 Stat. 1380, sec. 2, 44 Stat. 1362, secs. 7, 8, 57 Stat. 555, 556, sec. 3, 58 Stat. 109, Pub. Law 398, 80th Cong.; 38 U. S. C. 44–47, 49, 75, 192, 381a, 381e, ch. 12 note)

§ 4.6 *Civil War.* For the purposes of any service pension law granting pension to widows, remarried widows and children of veterans of the Civil War, the following definitions of relationship shall govern in the adjudication of claims for death pension:

(a) *Widow.* (1) The term "widow" shall mean a person who was married to the veteran prior to June 27, 1905. However, the $60 rate provided for in the act of July 3, 1926, as amended by the act of July 30, 1947, is payable only when the widow was the wife of the veteran during his Civil War service. Continuous cohabitation to date of death of the veteran is required in marriages entered into subsequent to March 2, 1899. (30 Stat. 1380.) (See § 4.16.)

(2) As to claims filed under Public Law 471, 78th Congress, after December 8, 1944, the term "widow" shall mean a person who:

(i) Was married to the veteran ten or more years prior to the date of his death;

(ii) Lived with the veteran continuously from the date of marriage to the date of his death as provided in § 4.16;

(iii) Is 60 years of age or over;

(iv) Has not remarried;

(v) Is in dependent circumstances. In determining dependency, the criteria outlined in § 3.57 of this chapter for determining the dependency of a parent shall be applied. (Pub. Law 471, 78th Cong.)

(b) *Remarried widow.* (1) For the purposes of the act of May 1, 1920 (Public No. 190, 66th Congress), as amended, the term "remarried widow" shall mean a person who married the veteran prior to June 27, 1905, and who otherwise meets the requirements of paragraph (a) (1), of this section, and whose subsequent or successive marriage or marriages has or have been dissolved either by the death of the husband or husbands, or by divorce on any ground except adultery on her part. (Pub. No. 323, 71st Cong., act of June 9, 1930.)

(2) For the purposes of the act of July 3, 1926 (Public No. 454, 69th Congress), the term "remarried widow" shall mean a person who was the wife of the veteran during the period of his service in the Civil War and whose subsequent or successive marriage or marriages has or have been dissolved either by the death of the husband or husbands, or by divorce.

(3) A remarried widow has no title under the provisions of Public Law 471, 78th Congress (Act of December 8, 1944).

(c) *Child.* The term "child" is as defined in § 4.2 (b) (1). (Sec. 3, 26 Stat. 182, 30 Stat. 1380, secs. 2, 3, 39 Stat. 845, sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 806, sec. 3, 46 Stat. 529, sec. 1, 58 Stat. 797, Pub. Law 270, 80th Cong.; 38 U. S. C. 44–47, 49, 75, 192, 205, 281, 283, 285, 288, 291, 291b, 293)

§ 4.8 *Spanish-American War, Boxer Rebellion and Philippine Insurrection; Public No. 2, 73d Congress, as amended.* For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), as amended, the following definitions of relationship shall govern in the adjudication of claims for death compensation or pension:

(a) *Widow.* The term "widow" of a veteran of the Spanish-American War, Boxer Rebellion, or Philippine Insurrection, shall mean a person who was married to the veteran prior to September 1, 1922, provided that as to awards approved on or after March 1, 1944, continuous cohabitation as described in § 4.16 must be established (Veterans Regulation No. 10 (b), par. 1, (38 U. S. C. Ch. 12), and Public Law 242, 78th Congress, act of March 1, 1944).

(b) *Child.* The term "child" shall mean the same as defined in § 4.14 (c). (Pub. Law 144, 78th Cong.)

(c) *Parent-father-mother.* The term "parent", "father", and "mother" shall mean the same as defined in § 4.14 (d). (Pub. Law 144, 78th Cong.) (Sec. 4, 48 Stat. 9, secs. 1, 7, 8, 57 Stat. 554, 555, 556, secs. 2, 4, 58 Stat. 107, Pub. Law 270, 80th Cong.; 38 U. S. C. 364a, h, 704, 727, ch. 12 note)

§ 4.12 *Spanish-American War, Boxer Rebellion and Philippine Insurrection; service acts as reenacted by Public No. 269, 74th Congress, and as amended.* For the purposes of Public No. 166, 69th Congress (act of May 1, 1926) as reenacted by Public No. 269, 74th Congress (act of August 13, 1935), and amended by Public Law 144, 78th Congress (act of July 13, 1943), Public Law 242, 78th Congress (act of March 1, 1944), and Public Law 762, 80th Congress (act of June 24, 1948), the following definitions of relationship shall govern in the adjudication of claims for death pension:

(a) *Widow.* (1) The term "widow" of a veteran of the Spanish-American War, Boxer Rebellion, or Philippine Insurrection, shall mean a person who was married to the veteran prior to January 1, 1938. As to awards approved on or after March 1, 1944, and increases in pension under section 3, Public Law 242, 78th Congress, continuous cohabitation as described in § 4.16 must be established: *Provided,* That where the widow is entitled solely by virtue of the provisions of section 2, Public Law 242, 78th Congress, pension shall not be paid for any period prior to April 1, 1944. However, the $60 rate is payable only when the widow was the wife of the veteran during his war service as defined in §§ 3.1000 (b), 3.1001 (b), 3.1002 (b), of this chapter. (Pub. Law 242, 78th Cong., act of March 1, 1944.) (See § 4.117.)

(2) As to claims under Public Law 762, 80th Congress which precludes payments for any period prior to June 24, 1948, the term "widow" shall mean a person who:

(i) Was married to the veteran ten or more years prior to the date of his death;

(ii) Lived with the veteran continuously from the date of marriage to the date of his death, as provided in § 4.16;

(iii) Is 60 years of age or over;

(iv) Has not remarried;

(v) Is in dependent circumstances. In determining dependency, the criteria outlined in § 3.57, of this chapter, for determining the dependency of a parent shall be applied. (Pub. Law 762, 80th Cong.)

(b) *Remarried widow.* The term "remarried widow" of a veteran of the Spanish-American War, Boxer Rebellion or Philippine Insurrection shall mean a person who married the veteran prior to January 1, 1938 (Pub. Law 242, 78th Cong., act of March 1, 1944), and who otherwise meets the requirements of paragraph (a) (1), of this section, and whose subsequent or successive marriage or marriages has or have been dissolved either by the death of the husband or husbands, or by divorce on any ground except adultery on the part of the wife. (Pub. Law 166, 69th Cong., act of May 1, 1926). A remarried widow has no title under the provisions of Public Law 762, 80th Congress (act of June 24, 1948). (Pub. Law 762, 80th Cong.)

(c) *Child.* For the purposes of the laws re-enacted by Public No. 269, 74th Congress, the term "child" shall mean the same as in § 4.2 (b) (1) and (2). (Pub. Law 144, 78th Cong.) (30 Stat. 1380, sec. 1, 40 Stat. 903, sec. 1, 42 Stat. 834, sec. 2, 44 Stat. 382, sec. 30, 48 Stat. 525, 49 Stat. 614, secs. 2, 4, 58 Stat. 107; Pub. Law 762, 80th Congress; 38 U. S. C. 44–47, 49, 75, 192, 355, 356, 364a, h, 366, 367, 368, 369)

§ 4.14 *World War I.* For the purpose of adjudicating claims for death pension or compensation under any law granting such benefits to dependents of deceased World War I veterans, the following definitions of relationship shall govern:

(a) *Widow.* For periods on or after May 13, 1938, and prior to December 14, 1944, the term "widow" of a World War I veteran shall mean a woman:

(1) Who was married prior to May 13, 1938, to the person who served: *Provided,* That the widow

(2) Must have lived continuously with the person who served from the date of marriage to the date of his death (this requirement was originally contained in section 4, Pub. Law 304, 75th Cong.), as provided in § 4.16, and

(3) Must not have remarried since the death of the person who served. (Sec. 3, Pub. Law 514, 75th Cong.)

(b) *Widow.* For periods on or after December 14, 1944, the term "widow" of a World War I veteran shall mean a woman who was married to the person who served:

(1) Prior to December 14, 1944, or

(2) Ten or more years prior to the date of his death, and

(3) Must have lived continuously with the person who served from the date of marriage to the date of his death, as provided in § 4.16, and

(4) Has not remarried since the veteran's death;

(5) *Provided,* That where the widow has been legally married to the veteran more than once, the date of original marriage will be used in determining whether the statutory requirement as to date of marriage, as outlined in subparagraphs (1) and (2) of this paragraph, has been met. (Sec. 3, Pub. Law 483, 78th Cong.)

(c) *Child.* For the purposes of Public No. 2, 73d Congress, section 28, Public No. 141, 73d Congress, Public No. 484, 73d Congress, and amendments thereto, the term "child" shall mean a person unmarried and under the age of eighteen years, unless prior to reaching the age of eighteen the child becomes or has become permanently incapable of self-support by reason of mental or physical defect, who is a legitimate child, a child legally adopted, a stepchild if a member of the man's household at the time of his death, an illegitimate child, but as to the father, only (1) if acknowledged in writing signed by him or (2) if he has been judicially ordered or decreed to contribute to such child's support, or (3) if he has been prior to date of death of the veteran, judicially decreed to be the putative father of such child, or (4) if he is otherwise shown by evidence satisfactory to the Administrator of Veterans' Affairs to be the putative father of such child; as to mother proof of birth is all that is required: *Provided,* That the payment of pension or compensation shall be continued after the age of eighteen years and until completion of education or training (but not after such child reaches the age of twenty-one years), to any child who is or may hereafter be pursuing a course of instruction at a school, college, academy, seminary, technical institute, or university particularly designated by him and approved by the Administrator, which shall have agreed to report to the Administrator the termination of attendance of such child, and if any such institution of learning fails to make such report promptly the approval shall be withdrawn. (Secs. 1 and 7, Pub. Law 144, 78th Cong.)

(d) *Parent; father; mother.* For the purposes of Public No. 2, 73d Congress, and Public No. 141, 73d Congress, as amended, the terms "parent," "father," and "mother" include a father, mother, father through adoption, mother through adoption, and persons who have stood in loco parentis to a member of the military or naval forces at any time prior to entry into active service for a period of not less than one year: *Provided,* That in claims based upon foster relationship, such relationship must have commenced prior to the veterans' majority: *Provided further,* That not more than one father and one mother, as defined, shall be recognized in any case, and preference shall be given to such father or mother who actually exercised parental relationship at the time of or most nearly prior to the date of entry into active service by the person who served. (Sections 1 and 8, Pub. Law 144, 78th Cong.) If the person who last occupied the relationship of parent does not establish entitlement, a person who had previously occupied such relationship is not thereby made eligible to pension or compensation benefits. Public Law 144, 78th Congress, does not affect awards to persons who were on the rolls July 13, 1943. (Secs. 3, 4, 28, 48 Stat. 9, 524, 1281, secs. 7, 8, 57 Stat. 555, 556, sec. 3, 58 Stat. 804, Pub. Law 762, 80th Cong.; 38 U. S. C. 505, 505a, 704, 722, ch. 12 note)

§ 4.15 *World War II.* For the purpose of adjudicating claims for death compensation or pension predicated on service rendered during World War II in an enlistment entered into prior to or on December 31, 1946, the following definitions of relationship shall govern:

(a) *Widow.* The term "widow" of a veteran of World War II shall mean a woman who was married to the veteran:

(1) Prior to or on December 31, 1956; and

(2) Must have lived continuously with the person who served from the date of marriage to the date of his death as provided in § 4.16 (this requirement is applicable to awards approved on or after February 1, 1945), and (Pub. Law 762, 80th Cong.), and

(3) Has not remarried since the veteran's death;

(4) *Provided,* That where the widow has been legally married to the veteran more than once, the date of original marriage will be used in determining whether the statutory requirement as to date of marriage as outlined in subparagraph (1) of this paragraph has been met.

(b) *Child.* The term "child" of a veteran of World War II shall mean the same as defined in § 4.14 (c).

(c) *Parent, father, mother.* The terms "parent", "father" and "mother" of a veteran of World War II shall mean the same as defined in § 4.14 (d). (Secs. 6, 7, 8, 57 Stat. 555, 556, secs. 4, 6, 58 Stat. 230, 804, Pub. Law 762, 80th Cong.; 38 U. S. C. 507b, 735, ch. 12 note)

§ 4.16 *Continuous cohabitation.* The requirement of any law administered by the Veterans' Administration that there must have been continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows there was no separation due to the fault of the widow. If the parties by mutual consent lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the widow to desert her husband, the continuity of the cohabitation will not be considered as having been broken. Temporary separations which naturally occur in the ordinary course of life, including those caused for the time being through fault on the part of either party, will not break the continuity of the cohabitation. State laws will not control in determining questions of desertion. Due weight will be given to findings of fact in court decisions made during the life of the veteran on issues subsequently involved in the application of this paragraph, but such findings will not be conclusive as to determinations to be made by the Veterans' Administration. (30 Stat. 1380, secs. 1, 3, 4, 58 Stat. 107, 109, 797; 38 U. S. C. 44–47, 49, 75, 192, 293, 364h, 381e)

EVIDENCE REQUIRED IN ESTABLISHING PROOF OF BIRTH, RELATIONSHIP, MARRIAGE, DEATH AND DEPENDENCY

CROSS REFERENCE: *Proof of birth or relationship.* (See § 3.46 of this chapter.)

§ 4.17 *Proof of marriage.* Proof of marriage shall be shown by evidence as provided in § 3.50 of this chapter, except that in the claim of a widow and/or child or children of a colored or Indian veteran, who enlisted prior to March 4, 1873, and whose death was due to service in

line of duty, no evidence of marriage, other than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them obligatory or habitually recognized each other as man and wife and were so recognized by their neighbors and lived together to date of enlistment, if death was in service, otherwise to date of death, will be required. (Sec. 4705, R. S., U. S. C. Title 38, sec. 198) (R. S. 4705; 38 U. S. C. 198)

CROSS REFERENCE: *Proof of death.* (See § 3.55 of this chapter.)

§ 4.18 *Unexplained absence for seven years.* (a) In the event evidence as provided in § 3.55 of this chapter cannot be furnished, if satisfactory evidence is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of seven years, and that after diligent search no evidence of his existence after date of disappearance has been found or otherwise received, the death of such absentee as of the date of the expiration of such period may be considered as sufficiently proved. No State law providing for presumption of death shall be applicable to claims for benefits under laws administered by the Veterans' Administration: *Provided,* That, except in a suit brought pursuant to the provisions of section 19 of the World War Veterans' Act, 1924, as amended, or section 617 of the National Service Life Insurance Act of 1940, as amended, the finding of death made by the Administrator of Veterans' Affairs shall be final and conclusive. (See Public No. 591, 77th Congress (act of June 5, 1942); also act of March 13, 1896.)

(b) A determination of whether the evidence furnished is satisfactory will be made by those officials specifically authorized by the Administrator of Veterans' Affairs in the same manner as is provided in § 3.55 (c) of this chapter for a finding of fact of death. (56 Stat. 325; 38 U. S. C. 32a)

§ 4.19 *Cause of death, direct or contributory.* (a) The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was a principal or contributory cause of death. In determining whether the service-connected disability contributed to death, it is not sufficient to show that it was merely concurrent or coexistent, but rather it must be shown that it contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises as to whether a service-connected disability was the principal or contributory cause of death, such doubt shall be resolved in favor of the claimant.

(b) The issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of all the facts and circumstances surrounding the death of the veteran, including particularly autopsy reports. If additional evidence, or clarification or amplification of evidence of record, is considered necessary full development will be accomplished. This may be done by field examination, if necessary. (Sec. 5, 43 Stat. 608; 38 U. S. C. 426)

CROSS REFERENCE: *Conditions which determine dependency.* (See § 3.57.)

PENSIONABLE AND COMPENSABLE SERVICE FOR DEATH PENSION AND COMPENSATION PURPOSES

§ 4.20 *Death of veteran due to service; general law.* (a) For the purposes of sections 4702 and 4707, Revised Statutes, as amended, the widow, child or children, or dependent mother or dependent father of any person embraced within sections 4692 and 4693, Revised Statutes, or the remarried widow of any such person who served in the Civil War, or in an Indian war, who died of a disability contracted in the service in line of duty, regardless of the character of discharge, shall be entitled to receive pension at the monthly rates specified in §§ 4.120, 4.122 (b) or 4.124, except that in no event shall the rates provided in § 4.120 (c) be allowed for any period prior to July 1, 1938, except further, that in no event shall the rates provided in § 4.122 (b) or § 4.124 be allowed for any period prior to December 19, 1941.

(b) Persons entitled to pension under the provisions of the General Pension Law for death resulting from service prior to April 21, 1898, shall be entitled to receive pension on and after July 1, 1938, at the monthly rates specified in § 4.122 (d) and on and after August 1, 1942, at the monthly rates specified in § 4.122 (e): *Provided,* That this regulation shall not be so construed as to reduce any pension under any act, public or private, nor shall it be so construed as to enlarge or abridge conditions of entitlement. (Secs. 1, 2, 3, 56 Stat. 731; 38 U. S. C., ch. 12 note)

§ 4.22 *Sections 4702 and 4707, Revised Statutes.* Sections 4702 and 4707, Revised Statutes, as amended, were repealed by Public No. 2, 73d Congress (act of March 20, 1933), insofar as they relate to pension based on service rendered subsequent to April 20, 1898, but have been re-enacted as to service rendered during the War with Spain, the Philippine Insurrection or the Boxer Rebellion by Public No. 141, 73d Congress (act of March 28, 1934), and Public No. 269, 74th Congress (act of August 13, 1935). The beginning and ending dates of these wars are set forth in §§ 3.1000, 3.1001 and 3.1002.

§ 4.24 *Death of Indian war veteran; act of March 3, 1927.* For the purposes of the act of March 3, 1927 (44 Stat. 1361), the widow, remarried widow, child or children of a person who served thirty days in any Indian war or campaign, or in connection with, or in the zone of any active Indian hostilities from January 1, 1817, to December 31, 1898, inclusive, and whose service was honorably terminated, the cause of death of the veteran being immaterial, shall be entitled to receive pension at the monthly rates specified in § 4.130.

§ 4.26 *Death of Indian War veteran; act of March 3, 1944.* (a) For the purposes of this act the widow, remarried widow, child or children of a person who served thirty days or more, or for the duration of one of the campaigns cited in section 1 of the act of March 4, 1917, even though such campaign was of less than thirty days duration, in any military organization, whether such person was regularly mustered into the service of the United States or not, but whose service was under the authority of or by the approval of the United States or any State or territory in any Indian war or campaign, or in connection with, or in the zone of, any active Indian hostilities in any of the States or territories of the United States from January 1, 1817, to December 31, 1898, inclusive, and whose service was honorably terminated, the cause of death being immaterial, shall be entitled to receive pension at the monthly rates specified in § 4.130.

(b) If a pension has been granted to an insane, idiotic or otherwise helpless child of the veteran or to a child or children of the veteran under sixteen years of age, the widow shall not be entitled to the pension authorized by section 3, Public Law 245, 78th Congress, until the pension to the child or children terminates, unless such child or children be a member or members of her family and cared for by her; and when these conditions are fulfilled and the pension is granted to the widow, payment of pension to such child or children shall cease; except that in the event the amount being paid to such child or children is less than the amount authorized to the widow, then the difference between said amounts shall be paid to the widow. (Sec. 3, 58 Stat. 109; 33 U. S. C. 381e)

§ 4.28 *Death of Civil War veteran; acts of May 1, 1920, July 3, 1926, June 9, 1930, and December 8, 1944.* (a) For the purposes of the acts of May 1, 1920 (41 Stat. 585), July 3, 1926 (44 Stat. 806), and June 9, 1930 (46 Stat. 529), the widow, remarried widow, child or children of a veteran who served at least ninety days during the Civil War, as provided for in § 3.1022 of this chapter, and was honorably discharged from all contracts of service during the period of said war; or, if the service was less than ninety days, and the veteran was discharged for or died in the service of a disability incurred in the service in line of duty, shall be entitled to receive pension at the monthly rates specified in § 4.132. As to the requirement for an honorable discharge from all contracts of service, see § 3.1040 (a) of this chapter (Joint Resolution of July 1, 1902, as amended by the act of June 28, 1906.)

(b) If pension has been granted to an insane, idiotic or otherwise helpless child of the veteran or to a child or children of the veteran under sixteen years of age, the widow shall not be entitled to pension until the pension to the child or children terminates, unless such child or children be a member or members of her family and cared for by her; and when these conditions are fulfilled and the pension is granted to the widow, payment of pension to such child or children shall cease; except that in the event the amount be-

ing paid to such child or children is less than the amount authorized to the widow, then the difference between such amounts will be paid to the widow. (32 Stat. 447, sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 806, sec. 3, 46 Stat. 529, secs. 1, 2, 58 Stat. 797, 798; 38 U. S. C. 288, 291, 291b, 293, 294)

§ 4.30 *Death of veteran due to wartime service; Public No. 2, 73d Congress*—(a) *Spanish-American War.* For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), the surviving widow, child or children and/or dependent mother or father of any deceased person who died as a result of injury or disease incurred in or aggravated by active military or naval service during the Spanish-American War, Boxer Rebellion, or Philippine Insurrection, as provided for in Veterans' Regulation No. 1 (a), Part I, paragraph I (38 U. S. C. ch. 12), shall be entitled to receive compensation at the monthly rates specified in § 4.124.

(b) *World War I.* For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), the surviving widow, child or children and dependent mother or father of any deceased person who died as a result of injury or disease incurred in or aggravated by active military or naval service during World War I, as provided for in Veterans' Regulation No. 1 (a), Part I, paragraph I (38 U. S. C. ch. 12), shall be entitled to receive compensation at the monthly rates specified in § 4.124. Effective August 16, 1937, service prior to July 3, 1921, during an enlistment entered into after November 11, 1918, shall be considered as World War I service: *Provided*, The person who served also served after April 5, 1917, and prior to November 12, 1918, and death occurred or was due to a disability incurred or to the aggravation of a disease or injury suffered, during the re-enlistment and prior to July 3, 1921. (Section 5, Pub. No. 304, 75th Cong.)

(c) *World War II.* For the purposes of Public No. 2, 73d Congress, as amended, the surviving widow, child or children and dependent father or mother of any deceased person who died as a result of injury or disease incurred in or aggravated by active military or naval service during World War II in an enlistment entered into prior to twelve o'clock noon December 31, 1946, as provided for in Veterans' Regulation No. 1 (a), Part 1, paragraph I (38 U. S. C. ch. 12), as amended by section 9, Public Law 144, 78th Congress, shall be entitled to receive compensation at the monthly rates specified in § 4.124. (Secs. 1, 4, 48 Stat. 8, 9, sec. 5, 50 Stat. 661, sec. 1, 55 Stat. 665, sec. 9, 57 Stat. 556; 38 U. S. C. 357b, 424a, 701, 704, ch. 12 note)

§ 4.32 *Death of veteran due to peacetime service; Public No. 2, 73d Congress, as amended, and accessory acts.* (a) For the purposes of Public No. 2 (act of March 20, 1933), the surviving widow, child or children and/or dependent mother or father of any deceased person who died as a result of injury or disease incurred in or aggravated by active military or naval service subsequent to April 20, 1898, other than in a period of war service, as provided for in Veterans' Regulation No. 1 (a), Part II, paragraph I (38 U. S. C. ch. 12), as amended by Public No. 159, 75th Congress (act of June 23, 1937), shall be entitled to receive pension at the appropriate peacetime rates specified in § 4.122.

(b) For the purposes of Public No. 159, 75th Congress (act of June 23, 1937), as amended by Public No. 732, 75th Congress (act of June 25, 1938), the surviving widow, child or children and dependent mother or father of any deceased person who dies or has died as a result of physical injury (sickness or disease shall not be regarded as an injury) incurred in line of duty while performing active naval service, subsequent to June 15, 1933, shall be entitled to receive pension at the appropriate peacetime rates specified in § 4.122.

(c) If death resulted from an injury received in line of duty in actual combat in a military expedition of military occupation, the dependents shall be entitled to the wartime rates specified in §§ 4.122 (a) and (b) and 4.124 (38 U. S. C. ch. 12, Reg. 1 (a), Part II, paragraph 1 (c), and section 1, Public No. 242, 77th Congress (act of August 21, 1941)). (See also § 3.67.)

(d) For the purposes of Public No. 497, 71st Congress (act of July 2, 1930), and Public No. 182, 77th Congress (act of July 18, 1941), the surviving widow, child or children, or dependent mother or father of any deceased officer or enlisted man of the United States Coast Guard, who died as a result of injury or disease incurred in or aggravated by active service in line of duty, on or after January 28, 1915 (except service during World War II), shall be entitled to receive pension at the appropriate peacetime rates specified in § 4.122. For the purposes of Public No. 359, 77th Congress (act of December 19, 1941), if death resulted from an injury or disease received in active service under the conditions indicated in § 4.33, the dependents shall be entitled to the wartime rates specified in § 4.122 (b) or § 4.124. (Sec. 2, 46 Stat. 847, secs. 1, 4, 48 Stat. 8, 9, 50 Stat. 305, sec. 1, 55 Stat. 665, sec. 1, 56 Stat. 731; 38 U. S. C. 238a, 357b, 701, 704, ch. 12 note)

§ 4.33 *Death of veteran (1) as a direct result of armed conflict, or (2) while engaged in extra hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war (Public Law 359, 77th Congress).* If death resulted from an injury or disease received in active service subsequent to March 4, 1861, in line of duty, (1) as a direct result of armed conflict, or (2) while engaged in extra hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war, the dependents shall be entitled to the wartime rates specified in § 4.122 (b) or § 4.124. (Vet. Reg. 1 (a), Part II, para. I (c) (38 U. S. C. ch. 12) as amended by the act of December 19, 1941, Public No. 359, 77th Congress). (Sec. 1, 55 Stat. 844; 38 U. S. C. ch. 12 note)

§ 4.34 *Death of veteran not due to service; Public No. 2, 73d Congress.* For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), the surviving widow and/or child or children of any deceased person who served in the active military or naval service during either the Spanish-American War, the Boxer Rebellion or the Philippine Insurrection, and whose service therein was as defined in Veterans' Regulation No. 1 (a), Part III, paragraph I (38 U. S. C. ch. 12), as amended by Veterans' Regulation No. 1 (c), shall be entitled to receive pension at the monthly rates specified in § 4.136.

(a) For the purposes of this paragraph pension shall not be paid to any unmarried person whose annual income exceeds $1,000, or to any married person or any person with minor children whose annual income exceeds $2,500. (38 U. S. C. ch. 12, Reg. 1 (a), Part III, paragraph II (a).) (See also § 3.228.) (Sec. 1 48 Stat. 8; 38 U. S. C. 701)

§ 4.36 *Death while performing duty in the transportation of the mails by air, Public No. 140, 73d Congress.* (a) For the purposes of section 4, Public No. 140, 73d Congress (act of March 27, 1934), in case any officer (including warrant and reserve officers), or enlisted man was killed while performing duty in the transportation of the mails by air during the period from February 10, 1934, to March 26, 1935, inclusive, a pension shall be paid to his dependents at the rate prescribed in § 4.122 (a) and/or (b), or § 4.124.

(b) Reserve officers performing duty under Public No. 140, 73d Congress (act of March 27, 1934), shall be deemed to be in the active military service and if injured or killed such officer and/or his dependents and beneficiaries shall be entitled to the same benefits as in the case of officers of the Regular Army and/or their dependents and beneficiaries.

(c) The beneficiary shall elect to receive benefits under either paragraph (a) or (b) of this section. (Section 4, act of March 27, 1934) See also §§ 3.1008 and 3.1060 of this chapter. (Secs. 4, 5, 48 Stat. 508, sec. 1, 55 Stat. 844; 38 U. S. C. ch. 12 note)

§ 4.38 *Death due to service, directly or presumptively; Section 28, Title III, Public No. 141, 73d Congress.* For the purposes of section 28, Title III, Public No. 141, 73d Congress (act of March 28, 1934), and section 3 of Public No. 304, 75th Congress (act of August 16, 1937), the surviving widow, child or children and dependent parents of a World War veteran who dies or has died from disease or injury and service connection for such disease or injury has been reestablished on or after March 28, 1934, as service connected under section 200 of the World War Veterans' Act, 1924, as amended, or which would have been established under said section 200, had the veteran been living on March 19, 1933, and reestablished on or after March 28, 1934, shall be entitled to receive compensation at the monthly rates specified in §§ 4.122 (a) or (b) and 4.123, (section 28, Pub. No. 141, 73d Cong., and section 3, Pub. No. 304, 75th Cong.).

(a) Death compensation is not payable under section 28, unless the veteran entered the active military or naval service prior to November 12, 1918, or unless the veteran entered active military service subsequent to November 11, 1918, and served with the United States military

forces in Russia prior to April 2, 1920: *Provided*, That effective August 16, 1937, service, rendered prior to July 2, 1921, during an enlistment entered into after November 11, 1918, shall be considered as World War I service provided the veteran also served after April 5, 1917, and prior to November 12, 1918, provided death occurred, or was due to a disability incurred, or to the aggravation of a disease or injury suffered during the reenlistment and prior to July 2, 1921. (Section 28, Public No. 141, 73d Congress; section 2, Public No. 344, 74th Congress; and section 5, Public No. 304, 75th Congress.) (Secs. 200, 201, 43 Stat. 615, 616, sec. 28, 48 Stat. 524, sec. 2, 49 Stat. 869, secs. 3, 5, 50 Stat. 660, 661; 38 U. S. C. 424a, 471, 472, 472b, 722, 724)

§ 4.39 *Death compensation payable by virtue of Public No. 196, 76th Congress (act of July 19, 1939), or under that act as amended by sections 7 and 8, Public No. 866, 76th Congress (act of October 17, 1940).* (a) For the purposes of the second proviso of section 1, Public No. 198, 76th Congress (act of July 19, 1939), on and after July 19, 1939, the surviving widow and child or children of a World War I veteran who was in receipt of compensation on March 19, 1933, for paralysis, paresis or blindness or who on that date was in receipt of compensation because of being helpless or bedridden from a service-connected disability and who died from such disease or injury shall be entitled to receive compensation at the monthly rates specified in § 4.140 subject to the conditions of § 4.14 as to definitions of the terms "widow" and "child", § 4.48 (f) as to annual income restrictions, and § 4.75 (a) as to date of commencement, and § 3.0 of this chapter as to service.

(b) For the purposes of Public No. 196, 76th Congress, as amended by sections 7 and 8, Public No. 866, 76th Congress (act of October 17, 1940), on and after October 17, 1940, the surviving widow, child or children of a World War I veteran, regardless of whether he was in receipt of compensation on March 19, 1933, and regardless of the cause of death, who dies or has died and service connection for any disease, injury or condition mentioned in paragraph (a) of this section is or would have been established under the laws or interpretations governing this class of cases prior to March 20, 1933, regardless of the date of death, shall be entitled to receive compensation at the monthly rates specified in § 4.140 subject to the conditions of § 4.14 as to definitions of the terms "widow" and "child", § 4.48 (f) as to annual income restrictions, and § 4.75 (a) as to date of commencement, and § 3.0 of this chapter as to service.

(c) Determinations of whether a veteran was suffering from paralysis, paresis, or blindness or was helpless or bedridden at the time of death will be made under the criteria contained in § 3.139 of this chapter. In making a determination of helplessness, the duration or length of time thereof is not a material factor. (Sec. 1, 53 Stat. 1067, secs. 7, 8, 54 Stat. 1196, sec. 4, 58 Stat. 230; 38 U. S. C. 507b, 703b, 703b note)

CROSS REFERENCE: *Death due to training, hospitalization or medical or surgical treatment; section 31, title III, Public No. 141, 73d Congress (act of March 28, 1934).* (See §§ 3.121 and 4.126 of this chapter.)

§ 4.47 *Act of May 1, 1926 (Public No. 166, 69th Cong.) as amended by the act of June 11, 1940 (Public No. 594, 76th Cong.); act of March 1, 1944 (Pub. Law 242, 78th Cong.); act of June 24, 1948 (Pub. Law 762, 80th Cong.).* For the purposes of these acts, the widow, remarried widow, child, or children of a veteran who served 90 days or more during the Spanish-American War, Boxer Rebellion or Philippine Insurrection, between April 21, 1898, and July 4, 1902, inclusive, service to be computed from date of enlistment to date of discharge, including all leaves of absence and furloughs under General Orders numbered 130, August 29, 1898, War Department; or, regardless of the length of service, if the veteran was discharged for or died in service of a disability incurred in the service in line of duty shall be entitled to receive pension at the monthly rates specified in § 4.134, when § 3.1007 of this chapter as to persons included, § 3.1018 of this chapter as to service, and § 3.1040 of this chapter as to character of discharge, are met.

(a) When a pension has been granted under the act of May 1, 1926, as amended by the acts of June 11, 1940, and March 1, 1944, to an insane, idiotic, or otherwise helpless child, or to a child or children under the age of 16 years, a widow or remarried widow shall not be entitled to a pension until the pension to such child or children terminates, unless such child or children be a member or members of her family and cared for by her; and, upon the granting of pension to such widow or remarried widow, payment of pension to such child or children shall cease: *Provided*, That where an unremarried widow becomes entitled to pension by reason of section 2, Public Law 242, 78th Congress (act of March 1, 1944), the pension payable to such widow and child or children not in her care and custody may be apportioned as prescribed in § 4.91 effective from the date of commencement of the award to the widow.

(b) If pension has been granted to a child or children of the veteran, the widow shall not be entitled to the pension authorized by section 1, Public Law 762, 80th Congress, until the pension to the child or children terminates, unless such child or children be a member or members of her family and cared for by her: and when these conditions are fulfilled and the pension is granted to the widow, payment of pension to such child or children shall cease; except that in the event the amount being paid by such child or children is less than the amount authorized to the widow, then the difference between said amounts shall be paid to the widow. (Sec. 2, 44 Stat. 382, 54 Stat. 301, secs. 2, 3, 4, 58 Stat. 107; 38 U. S. C. 351a, 364a, 364g, 364h, Pub. Law 762, 80th Cong.)

§ 4.48 *Death of World War I veteran from disease or injury not the result of military service (Public No. 484, 73d Congress), act of June 26, 1934, as amended)*—(a) *Basic entitlement.* (1) For periods on and after July 19, 1939, and prior to December 14, 1944, for the purpose of section 1 (b), Public No. 198, 76th Congress, the widow, child, or children, as defined in § 4.14, of a person who served with the United States military or naval forces in World War I before November 12, 1918, or before April 2, 1920, if service was in Russia, and who was honorably discharged after having rendered active service of 90 days or more (or having served less than 90 days, was discharged for disability incurred in the service in line of duty) and who dies or has died from a disease or disability not service-connected and at the time of death had a disability as defined in § 4.176 (b), directly or presumptively service-connected based on service in World War I after April 5, 1917, and before July 3, 1921, for which compensation would be payable if 10 per centum or more in degree, shall be entitled to receive pension at the monthly rates specified in § 4.140: *Provided*, That for the purpose of section 1 (a), Public No. 198, 76th Congress, pension shall be payable regardless of the length of the veteran's service if at the date of death he had such a disability which was 10 per centum or more disabling: *Provided further*, That on and after June 22, 1944, pension shall be payable under the conditions prescribed where the veteran was discharged or released from active service under conditions other than dishonorable. (Sec. 1503, Pub. Law 346, 78th Cong.)

(2) On and after December 14, 1944, for the purpose of section 1, Public Law 483, 78th Congress, the widow, child, or children of any deceased person who served in World War I before November 12, 1918, or if the person was serving with the United States military forces in Russia before April 2, 1920, and

(i) Who was discharged or released from active service under conditions other than dishonorable after having served ninety days or more, or

(ii) Who was discharged for disability incurred in the service in line of duty, or

(iii) Who at time of death was receiving or entitled to receive compensation or retirement pay for World War I service-connected disability, shall be entitled to receive pension at the monthly rates specified in § 4.140.

(b) *Income limitation; for periods on and after July 19, 1939.* For periods on and after July 19, 1939, no payment of pension shall be made under the provisions of Public No. 484, 73d Congress, as amended, to any widow without a child, to any child whose annual income exceeds $1,000.00, or to a widow with a child or children whose annual income exceeds $2,500.00: *Provided*, That on and after July 13, 1943, where payments to a widow are disallowed or discontinued by reason of annual income, payment to a child or children of the deceased veteran may be made as though there is no widow. The provisions of § 3.228 of this chapter will govern determinations under this subparagraph, but in no event will any payments by the United States Government because of disability or death under laws administered by the Veterans' Administration be considered. (Sec. 11, Pub. Law 144, 78th Cong.)

(c) *"Person who served," definition of.* The term "person who served" includes both men and women commissioned, enrolled, enlisted, or drafted who were finally accepted for active service, including members of training camps authorized by law and such other persons as have been heretofore recognized by statute as having a pensionable or compensable status. (See § 3.1 and 3.1006 of this chapter.)

(d) *Misconduct.* Death resulting from misconduct of the person who served is not a ground for denial of pension under the provisions of Public No. 484, 73d Congress, as amended.

(e) *Absence for 7 years.* For periods on and after June 5, 1942, and prior to December 14, 1944, pension under Public No. 484, 73d Congress, as amended, may be awarded to persons, otherwise entitled, in instances where the death of the veteran is presumed by applying the provisions of Public Law 591, 77th Congress, relating to the continued and unexplained absence of a person from his home and family for a period of 7 years, provided the veteran had a service-connected disability such as would, by its nature, be known to have existed to a degree which would bring it within the provisions of Public No. 484, 73d Congress, as amended, at the time presumption of death arose. For periods on and after December 14, 1944, as to claims where Public Law 483, 78th Congress, is applicable, the showing of a service-connected disability shall not be required except as stated in paragraph (a) (2) of this section. The date of death in such cases is the date determined to be the end of the 7-year period. (See §§ 4.18 and 4.76 (a).) (56 Stat. 325, secs. 1, 11, 14, 57 Stat. 554, 556, 558, secs. 1, 2, 3, 1503, 58 Stat. 230, 301, 803, 804; 38 U. S. C. 32a, 503, 503c, 504, 505a, 697c, 727, 731)

§ 4.49 *Death of World War II Veteran from disease or injury not the result of service, who at time of death had a service-connected disability (Public Law 312, 78th Congress, Act of May 27, 1944, and Public Law 483, 78th Congress, Act of December 14, 1944).* On or after May 27, 1944, for the purposes of section 4, Public Law 312, 78th Congress, the widow, child, or children, as defined in § 4.15 of a person who served during World War II in an enlistment entered into prior to twelve o'clock noon, December 31, 1946, and who was honorably discharged after having rendered active service of 90 days or more (or having served less than 90 days, was discharged for disability incurred in such service in line of duty) and who dies or has died from a disease or disability not connected with such service, and at the time of death had a service-connected disability as defined in § 4.178 (b) based on service in World War II after December 6, 1941, and before July 26, 1947, for which compensation would be payable if 10 per centum or more in degree shall be entitled to receive pension at the monthly rates specified in § 4.140: *Provided,* That pension shall be payable without regard to the length of the veteran's service if at the date of death he was receiving or entitled to receive compensation or retirement pay for a disease or disability as specified above which was 10 per centum or more disabling: *Provided further,* That

(a) The income limitations set forth in § 4.48 (b) shall be applicable in determining entitlement to pension under this law.

(b) On or after June 22, 1944, pension shall be payable under the conditions prescribed where the veteran was discharged or released from active service under conditions other than dishonorable (section 1503, Public Law 346, 78th Congress, sections 5 and 6, Public Law 483, 78th Congress).

(c) Computation of the 90 days service may include continuous service in an enlistment entered into prior to December 7, 1941, and continuing into the World War II period, or in an enlistment entered into prior to twelve o'clock noon, December 31, 1946, and continuing into the following period. (Secs. 4, 6, 300, 1503, 58 Stat. 230, 286, 301, 804; 38 U. S. C. 507b, 693g, 697c, 735)

§ 4.50 *Concurrent payment of two benefits to the same person.* As to the application of section 15, Public No. 144, 78th Congress, see § 4.51.

(a) For the purposes of the General Law, the Service Pension Acts granting pension to widows and children and dependent parents of veterans of the Civil and Indian wars, and the pension laws reenacted by Public No. 141, 73d Congress (act of March 28, 1934), and Public No. 269, 74th Congress (act of August 13, 1935), not more than one pension shall be allowed at the same time to the same person.

(b) (1) Death pension under Veterans' Regulation No. 1 (a), Part III (38 U. S. C. ch. 12); death pension under section 30, Title III, Public No. 141, 73d Congress (act of March 28, 1934); death pension under Public No. 269, 74th Congress (act of August 13, 1935); death pension predicated on service rendered prior to April 21, 1898; and compensation under Public No. 484, 73d Congress (act of June 28, 1934), as amended, except as barred to members of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) by section 211 of the World War Veterans' Act, 1924, as amended, or to a person receiving active service or retirement pay by section 212 of the World War Veterans' Act, 1924, as amended, may be paid concurrently with compensation under the United States Employees Compensation Act (act of September 7, 1916), as amended.

(2) Pension may not be paid the widow, child or dependent parents of naval reservists because of death resulting from physical injury due to naval service rendered between July 1, 1925, and June 15, 1933, inasmuch as jurisdiction over the payment of benefits covering this period is vested exclusively in the United States Employees Compensation Commission. (Sec. 14, act of February 28, 1925; 34 U. S. C. 762)

(3) Death pension or death compensation may not be paid a widow, child or dependent parent under section 31, Title III, Public No. 141, 73d Congress (act of March 28, 1934), as amended, concurrently with compensation granted under the United States Employees Compensation Act (act of September 7, 1916), as amended.

(c) (1) Payment of death pension under Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12) and disability pension under Veterans' Regulation No. 1 (a) is barred by Veterans' Regulation No. 10, paragraph XIII.

(2) Payment of disability pension under the reenacted act of June 2, 1930, and death pension under the reenacted act of May 1, 1926, is barred.

(3) A mother may not be paid a pension under the General Law as reenacted by section 30, Title III, Public No. 141, 73d Congress, and Public No. 269, 74th Congress, and pension as widow of a veteran of the Civil War.

(4) Death pension under Veterans' Regulation No. 1 (a), Part II (38 U. S. C. ch. 12), and disability pension under Veterans' Regulation No. 1 (a), Part I, or under the reenacted act of June 2, 1930, may not be paid concurrently.

(5) Death pension to the remarried widow of a Spanish War veteran under the act of May 1, 1926, and death compensation under Public No. 484, 73d Congress, as amended, to the widow of a World War I veteran, may not be paid concurrently.

(6) Death pension to a widow under Public No. 2, 73d Congress, and death pension to the remarried widow of a Spanish War veteran under the reenacted act of May 1, 1926, are not payable concurrently.

(d) Under the provisions of Public No. 2, 73d Congress (act of March 20, 1933), not more than one pension or award of compensation shall be payable to any one individual, except that the receipt of pension or compensation by a widow, child, or parent on account of the death of any person shall not bar the payment of pension or compensation on account of the death of any other person (Veterans' Regulation No. 10, paragraph XIII (38 U. S. C. ch. 12)); however, for periods prior to September 1, 1941, the increased rate of death compensation authorized by section 3, Public No. 304, 75th Congress (act of August 16, 1937), or section 5, Public No. 198, 76th Congress (act of July 19, 1939), may not be awarded concurrently with compensation or pension which may be payable under other laws because of the service and death of another person. Accordingly, for periods prior to September 1, 1941, when the maximum amount of compensation payable under Veterans' Regulation No. 1 (g) on account of the service and death of more than one person exceeds the maximum provided on account of the death of one person by section 3, Public No. 304, 75th Congress, or by section 5, Public No. 198, 76th Congress, the awards will be authorized at the rates prescribed by Veterans' Regulation No. 1 (g).

On and after September 1, 1941, the increased rates provided by section 5, Public No. 198, 76th Congress (act of July 19, 1939), as amended, shall be paid to those persons entitled to pension or compensation on account of the death, disability, or service of more than one person, if otherwise entitled. (Pub. Law 242, 77th Cong. (act of August 21, 1941))

(e) (1) For the purposes of Veterans' Regulation No. 1 (a), Part II, paragraph

I, as promulgated June 6, 1933 (38 U. S. C. ch. 12), pension shall not be paid concurrently with active duty pay but may be paid concurrently with United States Employees Compensation.

(2) For the purposes of Veterans' Regulation No. 1 (a), Part II, paragraph I (38 U. S. C. ch. 12), as amended by Public No. 159, 75th Congress (act of June 23, 1937), and Public No. 732, 75th Congress (act of June 25, 1938), which relate to conditions of title of reserve officers and members of the enlisted reserves of the United States Army, Navy, or Marine Corps, pension shall not be paid concurrently with active duty pay or United States Employees Compensation.

(3) For the purposes of the General Law, the service pension laws, Veterans' Regulation No. 1 (a), Part I, Part II (38 U. S. C. ch. 12) (except as amended by Public No. 159, 75th Congress, and Public No. 732, 75th Congress), and Part III; section 28, Public No. 141, 73d Congress, as amended; and Public No. 484, 73d Congress, as amended, the payment of United States Employees Compensation shall not operate as a bar to the payment of death pension or compensation (section 7, act of September 7, 1916; Acting Comp. General, October 3, 1938).

(f) (1) Pension or compensation benefits under Public No. 2, 73d Congress, or Public No. 484, 73d Congress, shall not be paid concurrently to a claimant as widow of one veteran and as the remarried widow of another veteran.

(2) A widow may be paid additional compensation under provisions of Public No. 484, 73d Congress, as amended, on account of a stepchild of her deceased husband, during the period they are being paid death compensation under Veterans' Regulation No. 1 (g) (38 U. S. C. ch. 12) because of the service-connected death of her former husband who served in the World War.

(3) A mother may be paid pension under Veterans' Regulation No. 1 series (38 U. S. C. ch. 12) but not under the re-enacted laws on account of the service of a son in the Spanish-American War, concurrently with pension as widow of a Civil War soldier.

(4) A widow may be paid pension based on the service of her husband in the Civil War and pension under a special act of the Congress or under the Veterans' Regulation No. 1 series (38 U. S. C. ch. 12) based on the service of a son who served in the Spanish-American War, the period of the latter service being covered by 38 U. S. C. ch. 12.

(5) Death pension under Veterans' Regulation No. 1 (a), Part III (38 U. S. C. ch. 12), is payable concurrently with death compensation based on service during the World War.

(g) As to circumstances under which both disability and death pension or compensation may be paid to the same person, see also §§ 3.296 to 3.302, and 3.1171 of this chapter. (Sec. 20, 17 Stat. 573, sec. 7, 39 Stat. 743, secs. 30, 31, 48 Stat. 525, 526, 49 Stat. 614; 5 U. S. C. 757, 38 U. S. C. 25, 366, 367, 368, 369, 501a, ch. 12 note)

§ 4.51 *Concurrent payments of two benefits to the same person on and after July 13, 1943.* On and after July 13, 1943, the provisions of this paragraph are applicable to all laws administered by the Veterans' Administration. Not more than one award of pension, compensation, or emergency officers' or regular retirement pay, shall be made concurrently to any person based on his own service. The receipt of pension or compensation by a widow, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of his own service, shall not bar the payment of pension or compensation on account of the death or disability of any other person. Pension, compensation, or retirement pay on account of his own service shall not be paid while the person is in receipt of active service pay, but the receipt of active service pay shall not bar the payment of pension or compensation on account of the death of any other person. (Sec. 15, Pub. Law 144, 78th Cong.) (Sec. 15, 57 Stat. 559; 38 U. S. C. ch. 12 note)

§ 4.52 *Right of election*—(a) *General.* A person entitled to receive pension or compensation under more than one law on account of the death of the same person may elect to receive the benefit which is most advantageous. Any person who elects to receive pension or compensation under one of two or more laws, places the right under the other law or laws in suspense and may at any time cause the suspension to be lifted by making another election. However, the election by the widow settles the question as to which statute is applicable and her election controls not only her claim but those of the children as well. See also §§ 3.217, 3.218 and 3.302 of this chapter.

(b) *Change of award from one law to another law.* Except where otherwise specifically provided, where payments of death compensation or pension are being made to a widow, child, or dependent parent of a deceased veteran under one law, the right to receive benefits under another law being in suspension, and a higher rate of compensation or pension becomes payable under the other law, benefits shall be payable at the higher rate commencing the date of receipt of a claim (formal or informal) constituting an election.

§ 4.53 *Application of liberalizing Veterans' Administration issues.* Except where otherwise specifically provided, death compensation or pension which is payable pursuant to the provisions of an amended regulation or a Veterans' Administration issue containing liberalizing criteria approved by the Administrator or by his direction shall not be paid for any period prior to the date of such regulation or issue.

§ 4.54 *Renouncement of pension.* Any person entitled to pension or compensation under any law or veterans regulation administered by the Veterans' Administration may renounce his right thereto. The application renouncing the right shall be in writing over the person's signature and upon filing of such application, payment of such benefits and the right thereto shall be terminated, and he shall be denied any and all rights thereto effective as of the date of last payment. The renouncement provided for herein shall not preclude the person from filing a new application for pension or compensation at a future date, but such application shall have the attributes of an original application and no payment will be made for any period prior to the date of receipt thereof. (38 U. S. C. ch. 12, Reg. 10 (c) paragraph xxi, as amended by section 3, Pub. Law 144, 78th Cong.)

§ 4.56 *Foreign residence.* No person entitled to pension or compensation under the provisions of Public No. 2, 73d Congress (act of March 20, 1933), who resides outside the continental limits of the United States, exclusive of Hawaii, Alaska, Puerto Rico, Virgin Islands, and the Panama Canal Zone, shall, while so residing, receive more than 50 percent of the amount of pension or compensation otherwise provided for the period ended February 4, 1935, date of cancellation of such provision of the law. (38 U. S. C. ch. 12, Reg. 10 (d)) Except as provided in § 4.110, awards of death pension or compensation awarded prior to March 20, 1933, based on service rendered subsequent to April 20, 1898, are subject to 50 percent reduction from July 1, 1933, to February 5, 1935. (Veterans' Reg. 4) The rates of compensation awarded under Public No. 484, 73d Congress (act of June 28, 1934), are not subject to the 50 percent reduction. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704)

§ 4.58 *Government employees right to pension.* For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), no person holding an office or position, appointive or elective, under the United States Government or the Municipal Government of the District of Columbia, or under any corporation, the majority of the stock of which is owned by the United States, shall be paid a pension so long as he continues to draw a salary from such employment, except (a) those persons so employed whose pension is protected by the provisions of the act; however, the rate of pension as to this class shall not exceed $6.00 per month; (b) those unmarried persons whose salary or compensation for service as such employee is in an amount not in excess of $1,000 per annum computed monthly, or any married persons or any person with minor children whose salary or compensation for service as such employee is in an amount not in excess of $2500 per annum computed monthly; and (c) widows of veterans: *Provided,* That effective on and after August 25, 1937, no award of death compensation or pension shall be subject to reduction or discontinuance under this paragraph. (Public No. 357, 75th Congress (act of August 25, 1937)) (Sec. 4, 48 Stat. 9, 50 Stat. 798; 38 U. S. C. 704)

§ 4.59 *Awards of death compensation and pension affected by Public Law 719, 79th Congress.* Where the Veterans' Administration has been notified by the Federal Security Agency that payments to any individual have been authorized pursuant to the provisions of section 201, Public Law 719, 79th Congress, the Veterans' Administration shall notify Federal Security Agency of any determina-

tion that death compensation or pension is payable to any dependent of the veteran: *Provided*, That any payments certified by Federal Security Agency pursuant to the provisions of section 201, Public Law 719, 79th Congress, covering any period on or after the first of any month for which death compensation or pension would be payable to or for the same person by the Veterans' Administration not exceeding the amount of any death compensation or pension otherwise payable for periods prior to the date of approval of the award, shall be deemed to have been paid by the Veterans' Administration. (Sec. 201, 60 Stat. 979; 42 U. S. C. 410)

Remarried Parents

§ 4.60 *Entitlement to compensation or pension of a parent who has remarried.* (a) Remarriage of a dependent mother or father is not a bar to the payment of death compensation or pension on or after July 30, 1941, under any law administered by the Veterans' Administration (Pub. Law 193, 77th Cong.).

(b) Under Public No. 2, 73d Congress (act of March 20, 1933), remarriage of a dependent mother or father after the death of the veteran is a bar to payment of death compensation or pension under Public No. 2, 73d Congress (act of March 20, 1933), for any period prior to July 30, 1941 (Pub. Law 193, 77th Cong., act of July 20, 1941).

(c) Under Public No. 78, 73d Congress (act of June 16, 1933), or Public No. 141, 73d Congress (act of March 28, 1934), remarriage of a dependent mother or father is not a bar to the payment of death compensation where payments are being made under an award protected by the provisions of section 20, Public No. 78, 73d Congress (act of June 16, 1933); or under the provisions of section 28, Title III, Public No. 141, 73d Congress (act of March 28, 1934): *Provided*, That no payment may be authorized under such act prior to March 28, 1934. (Sec. 201, 43 Stat. 616, secs. 4, 20, 28, 48 Stat. 9, 309, 524, sec. 1, 55 Stat. 608; 38 U. S. C. 472, 704, 722, 725)

§ 4.62 *Redetermination of dependency to be made upon remarriage.* In any case in which remarriage occurs a new determination of dependency will be made immediately and if the remarried parent is found to be no longer dependent, payments will be discontinued as of the date of last payment. (Public Law 193, 77th Congress, act of July 30, 1941) Determination of continuance of dependency and discontinuance for nondependency or failure to file dependency evidence, see § 3.286 of this chapter. (Sec. 1, 55 Stat. 608; 38 U. S. C. 725)

COMMENCEMENT OF ORIGINAL AWARDS OF DEATH PENSION OR COMPENSATION

§ 4.68 *General law.* Original awards of death pension under the General Law (sections 4702 and 4707, Revised Statutes, as amended), as to service prior to April 21, 1898, shall commence:

(a) *Widows.* The day following the date of the veteran's death if claim is filed within one year from the date of death, otherwise from the date of filing of a formal application, except that if payment is barred under the provisions of 4706, Revised Statutes, then payment should begin the day following the date that the youngest child by the widow and the veteran shall have attained the age of sixteen years.

b) *Remarried widows.* The date of filing formal application (R. S. 4708, as amended by the act of March 3, 1901 (31 Stat. 1445), and the act of February 28, 1903 (32 Stat. 920)).

(c) *Children.* (1) The day following the date of the veteran's death, if claim is filed within one year from the date of death, otherwise from the date of filing of a formal application: *Provided*, There be no widow, or if the widow has died without any payment of pension having been made to her.

(2) Date of remarriage of a pensioned widow, except when the widow has continued to receive pension after her remarriage and the child or children have resided with and been supported by her, their pension shall commence from the date of last payment to the widow.

(3) The day following the date of the veteran's death, if claim is filed within one year from the date of death, otherwise from the date of filing of a formal application, or from date of last payment to a pensioned widow if payment to the widow is barred under the provisions of section 4706, Revised Statutes.

(4) The date of commencement of open and notorious adulterous cohabitation by a widow who has forfeited title under the act of August 7, 1882 (22 Stat. 345), except that the date shall be from the date of last payment to the widow if payment of pension has been made to her since the commencement of such cohabitation.

(d) *Helpless children where entitlement arises solely by virtue of Public Law 280, 78th Congress.* Pension or additional pension payable to or for a helpless child within the purview of § 4.2 (b) (1) (ii) shall commence (1) April 1, 1944, in those cases where the death of the veteran occurred prior to April 1, 1944, and an application was pending on that date or filed on or after that date and within one year following the date of death; (2) the day following the date of death where the death of the veteran occurred on or after April 1, 1944, and application is filed within one year following the date of death; (3) the date of filing application, if application is not filed within one year following the date of death, but in no event prior to April 1, 1944.

(e) *Dependent mothers and fathers.* Original awards of death pension shall commence the day following the date of the veteran's death, if claim is filed within one year from the date of death, otherwise from the date of filing of a formal application.

(f) *Under section 30, Title III, Public No. 141, 73d Congress, and Public No. 269, 74th Congress.* No award under the General Law for death resulting from service in the War with Spain, Boxer Rebellion, or Philippine Insurrection shall commence prior to March 28, 1934, under section 30, Title III, Public No. 141, 73d Congress (act of March 28, 1934), or prior to August 13, 1935, under Public No. 269, 74th Congress (act of August 13, 1935). For the purposes of the General Law, as reenacted by the act of March 28, 1934 (section 30, Title III, Public No. 141, 73d Congress), and the act of August 13, 1935 (Public No. 269, 74th Congress), when claim was filed prior to August 5, 1939, the date of commencement shall be as prescribed in § 4.68 (a) to (e). When claim is filed on or after August 5, 1939, the date of commencement shall be as prescribed in § 4.72 (c). (Secs. 12, 13, 17 Stat. 571, sec. 1, 22 Stat. 345, 25 Stat. 173, secs. 1, 3, 26 Stat. 182, sec. 1, 31 Stat. 1445, sec. 30, 48 Stat. 525, 49 Stat. 614, 58 Stat. 186; 38 U. S. C. 37, 91, 94, 191, 200, 203, 204, 205, 281, 366, 367, 368, 369)

§ 4.70 *Service Acts, Civil War.* Original awards of death pension under the service acts relating to the Civil War (act of May 1, 1920, 41 Stat. 585; act of July 3, 1926, 44 Stat. 806; act of June 9, 1930, 46 Stat. 529; act of December 8, 1944, Pub. Law 471, 78th Cong.) shall commence:

(a) (1) *Widows.* The date of filing formal application: *Provided*, That where title is derived solely under the provisions of Public Law 471, 78th Congress (act of December 8, 1944), pension shall commence from the date of filing claim after December 8, 1944.

(2) *Remarried widows.* The date of filing formal application. Remarried widows have no title under Public Law 471, 78th Congress.

(b) *Children.* The date of filing formal application, except that if the widow is barred under the provisions of section 4706, Revised Statutes, or has forfeited title under the act of August 7, 1882 (22 Stat. 345), pension shall commence from the date of last payment to the widow if payment of pension has been made to her: *Provided*, That where pension or additional pension is payable to or for a helpless child solely by virtue of the provisions of Public Law 280, 78th Congress (see § 4.2 (b) (1) (ii)), pension shall commence (1) April 1, 1944, where application was pending on that date; (2) date of filing application, if application is filed on or after April 1, 1944. (Sec. 6, 41 Stat. 587, sec. 2, 58 Stat. 186, 798; 38 U. S. C. 37, 294, 321)

§ 4.71 *Service Act, Indian Wars.* Original awards of death pension under the service act relating to the Indian wars (act of March 3, 1927, 44 Stat. 1361), as amended, shall commence:

(a) (1) *Widows.* The date of filing formal application: *Provided*, That where title is derived solely under the provisions of Public Law 245, 78th Congress (act of March 3, 1944), pension shall commence from the date of filing claim after March 3, 1944.

(2) *Remarried Widows.* The date of filing formal application. Remarried widows have no title under Public Law 245, 78th Congress.

(b) *Children.* The date of filing formal application, except that in case of death or remarriage of a pensioned widow or forfeiture of her title, their payments shall commence from the date of such death, remarriage or forfeiture: *Provided*, That where pension or additional pension is payable to or for a

helpless child solely by virtue of the provisions of Public Law 280, 78th Congress (see § 4.2 (b) (1) (ii)), pension shall commence (1) April 1, 1944, where application was pending on that date; (2) date of filing application, if application is filed on or after April 1, 1944. (Sec. 2, 44 Stat. 1362, sec. 3, 58 Stat. 109, 186; 38 U. S. C. 37, 381a, e)

§ 4.72 *Service acts, war with Spain, Boxer Rebellion, and Philippine Insurrection.* Original awards of death pension under the service acts (except awards authorized solely by virtue of Public No. 594, 76th Congress), relating to the war with Spain, Boxer Rebellion and Philippine Insurrection (act of May 1, 1926, 44 Stat. 382, as reenacted by Public No. 269, 74th Congress, act of August 13, 1935), shall commence;

(a) *Where claim was filed prior to August 5, 1939*—(1) *Widows.* The date of filing formal application;

(2) *Remarried widows.* (Under Public No. 269, 74th Congress, only.) The date of filing formal application.

(b) *Children.* The date of filing formal application, except that, under the act of May 1, 1926, in case of death or remarriage of a pensioned widow or forfeiture of her title to pension, their payments shall commence from the date of such death, remarriage or forfeiture, but if the widow is estopped to deny remarriage, their payments shall commence the day following the date of last payment to the widow. This exception shall be for application in any case wherein the widow is receiving, or has heretofore made or shall hereafter make application for, pension under the act of May 1, 1926, and who thereafter elects or has heretofore elected to receive benefits in lieu thereof, under some other law.

(c) *Where claim was filed on or after August 5, 1939.* (1) For the purposes of Public No. 279, 76th Congress (act of August 5, 1939), when the veteran died prior to August 5, 1939, and claim is filed on or after that date, but within one year following the date of death of the veteran, the award shall be effective August 5, 1939, the date of enactment of the act. If application is not filed within one year from the date of death, the award shall be effective the date of filing the application.

(2) When the veteran died on or after August 5, 1939, and claim is filed within one year following the date of death, the award shall be effective the day following the date of death. If application is not filed within one year from the date of death, the award shall be effective the date of filing application.

(d) No award shall commence prior to March 28, 1934, under section 30, Title III, Public No. 141, 73d Congress, or prior to August 13, 1935, under Public No. 269, 74th Congress.

(e) Original awards of death pension not authorized except by virtue of Public No. 594, 76th Congress (act of June 11, 1940), shall, as to those persons on the rolls and as to claims pending on the date of enactment of that act, be effective June 11, 1940. In all other cases awards of pension authorized under that act shall be effective from the date of filing the application, but in no event prior to June 11, 1940.

(f) As to awards of pension or additional pension to or for a helpless child solely by virtue of the provisions of Public No. 280, 78th Congress, see § 4.68 (d). (Sec. 1, 40 Stat. 903, sec. 4, 42 Stat. 835, secs. 2, 4, 44 Stat. 382, 383, sec. 30, 48 Stat. 525, 49 Stat. 614, 54 Stat. 301, 58 Stat. 186; 38 U. S. C. 37, 351a, 355, 359, 364a, c, 366, 367, 368, 369)

§ 4.73 *Public No. 2, 73d Congress, and section 31, Public No. 141, 73d Congress; Spanish-American War, Philippine Insurrection, and Boxer Rebellion.* Original awards of death pension under Public No. 2, 73d Congress (act of March 20, 1933), and section 31, Public No. 141, 73d Congress, shall commence as follows:

For the purposes of Public No. 2, 73d Congress, and section 31, Title III, Public No. 141, 73d Congress, the effective date of an award of death pension based on service in the war with Spain, Boxer Rebellion, or Philippine Insurrection, shall be fixed in accordance with the facts found where claim was filed prior to August 5, 1939, except that no award of death pension shall be effective prior to the date of the veteran's death, date of the happening of the contingency upon which death pension is allowed, or the date of receipt of application therefor, whichever is the later date: *Provided,* That the benefits granted under section 31, Title III, Public No. 141, 73d Congress, shall not be awarded unless application is made therefor within two years after the date of death: *Provided further,* That for the purposes of Public No. 279, 76th Congress, if application is filed on or after August 5, 1939, and within one year from the date of death, the effective date shall be August 5, 1939, or the day following the date of death, whichever is the later. If claim is not filed within one year from the date of death, the award shall be effective the date of filing the application. (Secs. 4, 31, 48 Stat. 9, 526, 53 Stat. 1209; 38 U. S. C. 357a, 501a, 704)

§ 4.74 *Public No. 2 and sections 28 and 31, Public No. 141, 73d Congress, as amended*—(a) *World War I; service-connected death.* (1) The date of commencement of original awards of death compensation under the provisions of Veterans' Regulation No. 1 (a), Part I, as amended (38 U. S. C. ch. 12), or sections 28 or 31, Public No. 141, 73d Congress, as amended, shall be the day following the date of death if application is filed within one year after the date of death, otherwise the date of filing application: *Provided, however,* That the date of commencement shall be fixed in accordance with the facts found, but not prior to the date of the happening of the contingency upon which death compensation is allowed. (38 U. S. C. ch. 12, Reg. 2 (d) and section 6, Public No. 304, 75th Cong.)

(2) Compensation payable solely as a result of the definition of the term "widow" contained in section 3, Public No. 483, 78th Congress, shall commence the day following the date of death or December 14, 1944, whichever is the later, if application is filed within one year after the date of death; otherwise the date of filing application, but in no event prior to December 14, 1944. A claim pending on December 14, 1944, shall be considered a claim under this law.

(b) *Veterans' Reg. 1 (a), Part II, as amended by Veterans' Reg. No. 1 (g) (38 U. S. C. ch. 12) and Publics No. 159 and 732, 75th Congress, and Publics No. 182, 193, 359, and 690, 77th Congress.* Original awards of death pension under Vetans Regulation No. 1 (a), Part II, as amended by Veterans' Regulation No. 1 (g), paragraph 2, and Publics No. 159 and 732, 75th Congress, and Publics No. 182, 193, 359 and 690, 77th Congress, shall commence as follows:

(1) (i) To dependents of persons (except as otherwise provided in this paragraph) whose deaths resulted from injury or disease incurred in or aggravated while in service, the effective date of an award of death pension shall be fixed in accordance with the facts found except that no award of death pension shall be effective prior to the date of the veteran's death, date of the happening of the contingency upon which death pension is allowed or the date of receipt of application therefor, whichever is the later date: *Provided,* That if application is filed on or after July 30, 1942, and within one year from the date of the veteran's death, the effective date of an award of death pension shall be July 30, 1942, or the day following the date of death, whichever is the later, otherwise from the date of filing application. The increased rates authorized solely under Public No. 690, 77th Congress (act of July 30, 1942), shall not be awarded from a date earlier than August 1, 1942.

(ii) For the purposes of Public No. 182, 77th Congress (act of July 18, 1941), granting pension to the dependents of officers and enlisted men of the United States Coast Guard for peacetime service on or after January 28, 1915, and prior to July 2, 1930, no award of death pension shall be effective prior to the receipt on or after July 18, 1941, of an application for such benefits. On or after July 30, 1942, the proviso contained in subparagraph (1) (i) of this paragraph is for application.

(iii) For the purposes of any act as amended by Public No. 193, 77th Congress (act of July 30, 1941), no award of death pension to a dependent mother or father who has remarried shall commence prior to the receipt on or after July 30, 1941, of an application for such benefits. On or after July 30, 1942, the proviso contained in subparagraph (1) (i) of this paragraph, is for application.

(2) (i) To dependents of reserve officers and members of the enlisted reserves of the Army of the United States who served prior to June 15, 1933, and of the Navy and Marine Corps who served prior to July 1, 1925, whose deaths resulted from injury or disease incurred in or aggravated while in such active service, in line of duty: The date of filing application or, when pertinent, the date following the date of last payment of United States Employees Compensation, whichever is the later, where such benefits have been awarded and the claimant has elected to receive pension. (Dependents of Naval or Marine Corps reservists are not entitled to pension for

death due to causes incurred between July 1, 1925 and June 15, 1933.) Where application is filed on or after July 30, 1942, and no payment of United States Employees Compensation has been made and the claimant has elected to receive pension, then the proviso contained in subparagraph (1) (i) of this paragraph is for application.

(ii) To dependents of reservists (reserve officers and members of the enlisted reserves of the Army of the United States, and of the United States Navy and Marine Corps) whose deaths resulted from injury or disease incurred in or aggravated while in active service in line of duty on or after June 15, 1933, including service for training purposes: The date of filing application or the date following the date of last payment of United States Employees Compensation, whichever is the later, where such benefits have been awarded and the claimant has elected to receive pension, but not prior to June 23, 1937. Where application is filed on or after July 30, 1942, and no payment of United States Employees Compensation has been made and the claimant has elected to receive pension, then the proviso contained in subparagraph (1) (i) of this paragraph is for application.

(iii) For the purposes of Public No. 159, 75th Congress, as amended by Public No. 732, 75th Congress, pension payable to dependents of reservists of the Naval reserve or Marine Corps reserve (Army reserves not included), whose deaths resulted from injury (sickness or disease not regarded as an injury) received in line of duty on or after June 15, 1933, while performing active duty with or without pay, training duty with or without pay, drills, equivalent instruction or duty, appropriate duty, or other prescribed duty, or while performing authorized travel to or from such duties, shall commence on the date of filing application or the date following the date of last payment of United States Employees Compensation, whichever is the later, where such benefits have been awarded and the claimant has elected to receive pension, but not prior to July 1, 1938. Where application is filed on or after July 30, 1942, and no payment of United States Employees Compensation has been made and claimant has elected to receive pension, then the proviso contained in subparagraph (1) (i) of this paragraph is for application.

(c) *Awards based on new and material evidence.* For the purposes of Veterans' Regulation No. 2 (d) (38 U. S. C. ch. 12) awards pursuant to claims allowed upon new and material evidence relating to the same factual basis as that of a finally disallowed claim shall commence from the date of receipt of such evidence or accompanying communication when such evidence or accompanying communication meets the requirements as to what constitutes an informal claim under current precedents and instructions. (See §§ 3.201 and 3.205 of this chapter.)

(d) *Commencement of awards to children.* For the purposes of the Veterans Regulations (38 U. S. C. ch. 12), Public No. 141, 73d Congress (excepting section 30), as amended, Public No. 484, 73d Congress, as amended, Public No. 304, 75th Congress, as amended, awards to children for whom a widow is in receipt of pension or compensation, when her pension or compensation is terminated upon the happening of the contingency upon which it is limited, shall commence from the date following the termination of the widow's award, without the necessity of filing an application. (Secs. 1, 4, 9, 28, 31, 48 Stat. 8, 9, 10, 524, 526, sec. 6, 50 Stat. 305, 661, sec. 2, 55 Stat. 599, 608, sec. 4, 56 Stat. 732; 38 U. S. C. 238d, 472d, 501a, 701, 704, 709, 722, 725, ch. 12, note)

§ 4.75 *Death compensation payable by virtue of Public No. 196, 76th Congress (act of July 19, 1939), as amended by sections 7 and 8, Public No. 866, 76th Congress (act of October 17, 1940).* The commencing date of pension or compensation under this act shall be the same as provided in § 4.74 (a). (Sec. 2, 53 Stat. 1067, 38 U. S. C. 703b, note)

§ 4.76 *Public No. 484, 73d Congress, as amended, nonservice-connected death*—(a) *World War I.* (1) The date of commencement of original awards of death pension under the provisions of Public No. 484, 73d Congress, as amended, shall be the day following the date of death if application is filed within one year after the date of death, otherwise the date of filing application: *Provided, however,* That the date of commencement shall be fixed in accordance with the facts found, but not prior to the date of the happening of the contingency upon which death pension is allowed. (38 U. S. C. ch. 12, Reg. 2 (d) and section 6, Public No. 304, 75th Cong.)

(2) Pension payable solely by reason of the conditions of entitlement contained in section 1, Public Law 483, 78th Congress, or as a result of the definition of the term "widow" contained in section 3, Public Law 483, 78th Congress, shall commence the day following the date of death or December 14, 1944, whichever is the later, if application is filed within one year after the date of death, otherwise the date of filing application, but in no event prior to December 14, 1944. A claim pending on December 14, 1944, shall be considered a claim under this law.

(b) *World War II (Public Law 312, 78th Congress).* The date of commencement of original awards of death pension payable solely as a result of the provisions of section 4, Public Law 312, 78th Congress (see § 4.49), shall be the day following the date of death of the veteran or May 27, 1944, whichever is the later, if application is filed within one year from date of death; otherwise from date of filing application, but in no event prior to May 27, 1944. A claim pending on May 27, 1944, shall be considered a claim under this law. (Secs. 4, 5, 48 Stat. 9, 1282, sec. 1, 49 Stat. 2031, sec. 6, 50 Stat. 661, secs. 3, 4, 58 Stat. 230, 804; 38 U. S. C. 471a–1, 472d, 503 note, 504 notes, 507, 508, 704)

§ 4.77 *Death pension or compensation payable solely by virtue of certain amendatory laws*—(a) *Public Law 144, 78th Congress.* The date of commencement of original awards of death pension or compensation, payable solely as a result of the provisions of Public Law 144, 78th Congress, shall be the day following the date of death of the veteran or July 13, 1943, whichever is the later, if application is filed within one year from date of death; otherwise from date of filing application. In no event, however, shall the rates of pension or compensation authorized by section 14 of the act be payable for any period prior to August 1, 1943.

(b) *Public Law 242, 78th Congress.* The date of commencement of original awards of death pension payable solely as a result of the provisions of Public Law 242, 78th Congress, shall be the day following the date of death of the veteran or April 1, 1944, whichever is the later, if application is filed within one year from date of death; otherwise from date of filing application, but in no event prior to April 1, 1944. A claim pending on March 1, 1944, shall be considered a claim under this law.

(c) *Death pension payable solely by virtue of Public Law 762, 80th Congress.* The date of commencement of original awards of death pension payable solely as a result of the provisions of Public Law 762, 80th Congress, shall be the day following the date of death of the veteran or June 24, 1948, whichever is the later, if application is filed within one year from date of death; otherwise from date of filing application, but in no event prior to June 24, 1948. A claim pending on June 24, 1948 shall be considered a claim under this law. (Sec. 16, 57 Stat. 559, 58 Stat. 107, 38 U. S. C. 364a, 364g, 364h, 365, 370, 731 note)

§ 4.78 *World War II; Public No. 2, 73d Congress, as amended.* (a) Where the death of a person occurs as the result of service in World War II, except as to circumstances within the purview of paragraph (b) of this section, an original award of death compensation shall commence the day following the date of death if claim is filed within one year after that date; otherwise, the date of filing claim (section 4, Public Law 690, 77th Congress, and section 16, Public Law 144, 78th Congress).

(b) Effective December 7, 1941, where a report of death or finding of death has been made by the Secretary of War or the Secretary of the Navy and the person was reported missing or missing in action, interned in a neutral country, captured by an enemy, beleaguered or besieged, as contemplated by Public Law 490, 77th Congress as amended, or the claim for death compensation was filed more than one year after the date of (actual) death, an original award of death compensation shall commence:

(1) The day following the date fixed by the Secretary as the date of death (actual) in such report: *Provided,* That claim is filed within one year after the date the report of death is made; otherwise the date of filing claim; however, in no event shall death compensation be paid to a dependent for any period prior to the date the report of death was made, for which such dependent has received or is entitled to receive an allowance, allotment, or service pay of the deceased. (Pub. Law 419, 78th Cong.)

(2) The day following the date of death (presumptive) fixed by the Secretary in such finding: *Provided*, That claim is filed within one year after the date the finding of death is made; otherwise the date of filing claim. (Sec. 4, 56 Stat. 732, sec. 16, 57 Stat. 559, 58 Stat. 728; 38 U. S. C. 731 note, 733, ch. 12 note)

§ 4.79 *Additional allowance for posthumous child*—(a) *When effective from date of the child's birth.* (1) For the purposes of all laws granting compensation or pension to widows or children of veterans of any war or the Regular Establishment, except as provided in subparagraph (2) of this paragraph, the additional allowance on account of a posthumous child shall be effective as of the date of birth of such child upon receipt of proof of birth in conformity with the requirements of § 3.46 of this chapter: *Provided*, Mention of the expected child was made in the application for death benefits filed by the widow or the other children.

(2) In those cases in which death compensation or pension is payable from the day following the date of the veteran's death (section 6, Public No. 304, 75th Congress, and Public No. 279, 76th Congress), regardless of whether mention of the expected child was made by the widow in her original claim, and notice of the birth of such child is received within one year of the date of the veteran's death, the additional allowance for such posthumous child will be effective from the date of the child's birth.

(b) *When effective from the date of receipt of claim.* In all other cases not covered by paragraph (a) of this section, the additional allowance on account of the posthumous child will be effective from the date of receipt of claim for such child. (Sec. 6, 50 Stat. 661, 53 Stat. 1209, sec. 4, 56 Stat. 732; sec. 16, 57 Stat. 559; 38 U. S. C. 357a, 472d, 731 note, ch. 12 note)

EFFECTIVE DATES OF INCREASE OF DEATH PENSION OR COMPENSATION

§ 4.80 *Civil and Indian Wars.* Under the provisions of the acts of June 9, 1930 (46 Stat. 529) and March 3, 1944 (Public No. 245, 78th Congress), increased pension on account of age of widows and remarried widows shall commence from the seventieth birthday: *Provided*, That as to widows of Indian war veterans in receipt of pension on March 3, 1944, the increased rates payable under Public Law 245, 78th Congress, by reason of attained age or because the widow was the wife of the soldier during his war service shall commence from the date of filing claim after March 3, 1944. (Sec. 2, 58 Stat. 109; 38 U. S. C. 381c)

§ 4.81 *General Law.* (a) Where a person was on the rolls July 1, 1938, under the provisions of the General Pension Law, for death resulting from service prior to April 21, 1898, pension at the rate provided in § 4.122 (d) (Public No. 758, 75th Congress, act of June 28, 1938) shall be authorized effective July 1, 1938, in any case where such rate exceeds that being paid the beneficiary on June 30, 1938, provided entitlement thereto is otherwise established.

(b) Where a person was on the rolls December 19, 1941, under the provisions of the General Pension Law, pension at the rate provided in § 4.122 (b) or § 4.124 (Public Law 359, 77th Congress) shall be authorized effective December 19, 1941, provided entitlement thereto is otherwise established.

(c) Where a person was on the rolls August 1, 1942, under the provisions of the General Pension Law, for death resulting from service prior to April 21, 1898, pension at the rate provided in § 4.122 (e) (Public Law 690, 77th Congress, act of July 30, 1942) shall be authorized effective August 1, 1942, in any case where such rate exceeds that being paid the beneficiary on July 31, 1942, provided entitlement thereto is otherwise established. (52 Stat. 1214, sec. 1, 55 Stat. 844, sec. 1, 56 Stat. 731; 38 U. S. C. 35, ch. 12 note)

§ 4.82 *Public No. 2, and Sections 28 and 31, Title III, Public No. 141, 73d Congress, Section 3, Public No. 304, 75th Congress, Section 5, Public No. 198, 76th Congress, or Public Laws 242, 359, 667, 690, 77th Congress, and Public Law 242, 78th Congress.* The effective date of an award of increased pension or compensation payable under Public No. 2, 73d Congress, sections 28 and 31, Title III, Public No. 141, 73d Congress, section 3, Public No. 304, 75th Congress, section 5, Public No. 198, 76th Congress, Public Laws 242, 359, 667, and 690, 77th Congress, and Public Law 242, 78th Congress, shall be fixed in accordance with the facts found, except that:

(a) No award of increased pension or compensation may be effective prior to the date of receipt of the evidence showing entitlement thereto; except that a widow who attains an age at which an increased rate is provided under Veterans' Regulation No. 1 (g) (38 U. S. C. ch. 12) or under section 3 of Public No. 304, 75th Congress, or under section 5 of Public No. 198, 76th Congress, or under section 1 of Public Law 690, 77th Congress, or under section 3 of Public Law 242, 78th Congress, shall be entitled to receive such increase effective on the date of attainment of the age at which an increase is authorized if evidence establishing the date of birth is on file on the date of attainment of such age or is received within one year from the date of the prescribed anniversary of the date of birth: *Provided*, That in original claims where the claimant has shown that she was past the age at which the minimum rate is payable at the date of filing her claim, the increased rate provided on account of age may be authorized as of the beginning date of the award or as of the date she attained the required age whichever is the later: *Provided*, Satisfactory proof of the fact and date of birth is received within one year from the date of request therefor: *Provided further*, That in no event will the increase be awarded from a date prior to the date authorized in the law or regulation invoked: *Provided further*, That any increase authorized for periods prior to September 1, 1941, under section 3 of Public No. 304, 75th Congress, or section 5, Public No. 198, 76th Congress, must be made subject to the conditions of subparagraph (c) hereof: *Provided further*, That any increase authorized for periods beginning on or after September 1, 1941, under Public Law 242, 77th Congress, must be made subject to the conditions of paragraph (f) of this section. (See § 4.52.)

(b) For the purposes of paragraph (a) of this section, increased pension or compensation shall be taken to mean any award of pension or compensation amending, reopening, or supplementing a previous award, authorizing any payments not theretofore authorized to the particular individual involved. (38 U. S. C. ch. 12, Reg. 2 (a) Part I par. II)

(c) Subject to the provisions of paragraphs (a) and (b) of this section, where the widow or parent of a World War veteran, including a veteran who served as provided in section 5, Public Law 304, 75th Congress, was on the rolls on August 16, 1937, compensation at the rates provided in section 3, Public Law 304, 75th Congress, shall be effective August 16, 1937; or if the widow was on the rolls July 19, 1939, the increased rate shall be effective July 19, 1939: *Provided*, That the rate of compensation shall be as prescribed in subparagraph (1), (2) or (3) of this paragraph if the widow or parent was in receipt of Government insurance on August 16, 1937, or July 19, 1939, or thereafter, whichever date is applicable.

(1) (i) The rates under section 3, Public No. 304, 75th Congress, shall not be payable while the combined monthly rates of compensation and yearly renewable term, automatic, or United States Government life (converted) insurance; or compensation and compensation; or compensation and pension, equal or exceed the rates prescribed in section 3, *supra*. (§ 4.123)

(ii) The rates under section 5, Public No. 198, 76th Congress, shall not be payable while the combined monthly rates of compensation and yearly renewable term, or automatic insurance; or compensation and compensation; or compensation and pension payable equal or exceed the rates prescribed in section 5, supra. (§ 4.124.)

(2) If the combined monthly rates of compensation and insurance; or of compensation and compensation; or of compensation and pension payable under the laws in effect prior to August 16, 1937, do not equal or exceed the rates prescribed in section 3, Public No. 304, 75th Congress, or in section 5 of Public No. 198, 76th Congress, the amount of compensation payable while the insurance or concurrent compensation or pension is payable shall be that which equals the difference between the amount of the monthly instalment of insurance or concurrent compensation or pension and the rate of compensation otherwise payable under section 3, Public No. 304, 75th Congress, or section 5, Public No. 198, 76th Congress, as the case may be, subject to the increase at the full rate prescribed in the applicable law from the day following the ending date of the insurance award or of the discontinuance of payments of compensation or pension under the concurrent award. United States Government life (converted) insurance is not to be included in the computation of the combined monthly rates from and after

July 19, 1939, (the date of enactment of Public No. 198, 76th Congress).

(3) Rates and increases of compensation rates shall be paid under Veterans' Regulation No. 1 (g) (38 U. S. C. ch 12) on or after August 16, 1937, or on or after July 19, 1939, in those cases in which the greater amount of compensation is payable under such regulation, without regard to the amount of insurance, concurrent awards of compensation or pension being paid.

(d) (1) Widows or parents in World War cases placed on the compensation rolls effective on or after August 16, 1937, shall be paid for any period over which they may be entitled to compensation at the rates and increases of rates prescribed under paragraph (c) of this section, except that no rate prescribed under section 3, Public No. 304, 75th Congress, in excess of the rate provided under Veterans' Regulation No. 1 (g) (38 U. S. C. ch. 12) shall be effective prior to September 1, 1937.

(2) Widows or parents in World War I cases placed on the compensation rolls effective on or after July 19, 1939, shall be paid for any period over which they may be entitled to compensation at the rates and increased rates prescribed under paragraph (c) of this section except that no rate prescribed under section 5, Public No. 198, 76th Congress, in excess of the rate provided under section 3, Public No. 304, 75th Congress, shall be effective prior to August 1, 1939.

(e) For the purpose of paragraphs (c) and (d) of this section the term "on the rolls" shall include those who are placed on the rolls effective as of a date prior to August 16, 1937, or prior to July 19, 1939, whichever date is for application.

(f) Awards of service-connected benefits for periods beginning on or after September 1, 1941, to widows or parents of veterans of World War I, Spanish-American War, Philippine Insurrection, or Boxer Rebellion, or of veterans whose death resulted from service as comprehended by paragraph I, (c), Part II, Veterans' Regulations No. 1 (a), (38 U. S. C. ch. 12).

(1) On and after September 1, 1941, the rates provided by section 5, Public No. 198, 76th Congress, are payable to the widows and parents of veterans of World War I, the Spanish-American War, Philippine Insurrection, and Boxer Rebellion and of veterans whose deaths resulted from service as comprehended by paragraph I (c), Part II, Veterans' Regulation No. 1 (a), (38 U. S. C. ch. 12) subject to the provisions of subparagraphs (2), (3), and (4) of this paragraph.

(2) During the period beginning September 1, 1941, and ending July 31, 1942, the rates payable under section 5, Public No. 198, shall not be payable while the combined monthly rates of compensation or pension and of yearly renewable term, automatic insurance or National Service Life Insurance payable, equal or exceed the rates prescribed in section 5, *supra*. (§ 4.124.)

(3) If during the period beginning September 1, 1941, and ending July 31, 1942, the combined monthly rates of compensation or pension payable under the laws in effect prior to August 16, 1937, and insurance do not equal or exceed the rates prescribed in section 5 of Public No. 198, 76th Congress, the amount of compensation or pension payable during such period while the insurance is payable shall be that which equals the difference between the amount of the monthly installment of insurance and the rate of compensation or pension otherwise payable under section 5, Public No. 198, 76th Congress, subject to the increase at the full rate prescribed therein from the date following the ending date of the insurance award, or August 1, 1942, whichever is the earlier.

(4) On and after August 1, 1942, in no event shall monthly payments of yearly renewable term or automatic, or National Service Life Insurance serve to reduce the amounts of compensation or pension otherwise payable under existing compensation or pension laws. (Pub. Law 667, 77th Cong.)

(g) Awards of service-connected benefits for periods beginning on or after December 19, 1941, to widows, children, or parents of veterans whose death resulted from service since March 4, 1861, as comprehended by paragraph I (c), Part II, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), as amended by the act of December 19, 1941 (Pub. Law 359, 77th Cong.).

(1) On and after December 19, 1941, the rates provided by section 5, Public No. 198, 76th Congress, as amended, are payable to the widows, children, and parents of veterans whose death resulted from service since March 4, 1861, as comprehended by paragraph I (c), Part II, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12), as amended by Public Law 359, 77th Congress (act of December 19, 1941), subject to the provisions of subparagraphs (2) and (3) of this paragraph and paragraph (f) (4) of this section.

(2) During the period beginning December 19, 1941, and ending July 31, 1942, the rates payable under section 5, Public No. 198, 76th Congress, as amended, shall not be payable while the combined monthly rates of compensation or pension and of yearly renewable term, or automatic insurance, or National Service Life Insurance payable, equal or exceed the rates prescribed in section 5, *supra*. (§ 4.124.)

(3) If during the period beginning December 19, 1941, and ending July 31, 1942, the combined monthly rates of compensation or pension and insurance do not equal or exceed the rates prescribed in section 5 of Public No. 198, 76th Congress, as amended, the amount of compensation or pension payable during such period while the insurance is payable shall be that which equals the difference between the amount of the monthly installment of insurance and the rate of compensation or pension otherwise payable under section 5, Public No. 198, 76th Congress, as amended, subject to the increase at the full rate prescribed therein from the date following the ending date of the insurance award, or August 1, 1942, whichever is the earlier. In no event, however, will the rates payable be less than those authorized by paragraph I, Veterans' Regulation No. 1 (g) (38 U. S. C. ch. 12). (Secs. 1, 4, 28, 31, 48 Stat. 8, 9, 524, 526, sec. 3, 50 Stat. 660, sec. 5, 53 Stat. 1070, sec. 3, 55 Stat. 844, secs. 2, 10, 56 Stat. 659, 731, sec. 3, 58 Stat. 107; 38 U. S. C. 364g, 472b–1, 501a, 701, 704, 722, ch. 12 note)

EFFECTIVE DATES OF REDUCTIONS AND DISCONTINUANCES OF DEATH PENSION AND COMPENSATION

§ 4.84 *General law and service acts.* Awards of compensation or pension shall be reduced or discontinued as follows under:

General law (sections 4702 and 4707, Revised Statutes, as amended);

Service acts, relating to the Civil War, act of May 1, 1920 (41 Stat. 585); act of July 3, 1926 (44 Stat. 806); act of June 9, 1930 (46 Stat. 529); and act of December 8, 1944 (Pub. Law 471, 78th Cong.);

Indian wars, act of March 3, 1927 (44 Stat. 1361); and act of March 3, 1944 (Pub. Law 245, 78th Cong.);

War with Spain, Boxer Rebellion, and Philippine Insurrection, act of May 1, 1926 (44 Stat. 382), as reenacted by Public No. 269, 74th Congress (act of August 13, 1935); Public Law 242, 78th Congress (act of March 1, 1944); Public Law 762, 80th Congress (act of June 24, 1948);

Act of July 13, 1943, Public Law 144, 78th Congress; and

Act of April 1, 1944, Public Law 280, 78th Congress.

(a) *Termination by limitation*—(1) *Widows and remarried widows.* (i) Death compensation or pension payable to a widow or remarried widow shall terminate the day of death or the day preceding remarriage. If the widow is receiving additional compensation or pension for a child or children based on service rendered prior to April 21, 1898, the date of termination of such additional compensation or pension shall be the date of death of the child or the day preceding the child's sixteenth birthday. If the widow is receiving additional compensation or pension for a child or children based on service rendered on and after April 21, 1898, the date of termination of such additional compensation or pension shall be the date of death, or the day preceding the child's eighteenth birthday, or the day preceding marriage in those cases in which the additional compensation or pension is payable solely by reason of the definition of the term "child" contained in section 7, Public Law 144, 78th Congress: *Provided*, That the discontinuance of additional compensation or pension for a child or children because of school attendance shall be effective as provided in § 4.98 (g). Additional death compensation or pension being paid on behalf of any child by reason of permanent incapacity for self-support shall be discontinued effective the date of last payment when a determination has been made that such condition no longer exists. Additional compensation or pension for a helpless child who marries shall be discontinued as of the date preceding the marriage, except that where the award was approved under the general law or a service act prior to April 1, 1944, based on a finding that the child was helpless prior to attaining the age of 16 years the presumption that helplessness ceases on marriage may be

overcome by positive proof of continuing helplessness.

(ii) Overpayment to widow: When a widow has continued to receive compensation or pension after her remarriage and the veteran's child or children under the age of 16 years or helpless child or children have resided with and been supported by her, the effective date shall be the date of last payment.

(iii) Abandonment of children by widow: The effective date shall be the date of last payment to a widow whose compensation or pension is suspended by reason of abandonment of children under § 4.100.

(iv) Adulterous cohabitation: The effective date shall be from the commencement of open and notorious adulterous cohabitation when forfeiture has been incurred under § 4.102. (Act of August 7, 1882 (22 Stat. 345))

(2) *Children.* (i) Death compensation or pension payable to a child based on service rendered prior to April 21, 1898, shall be discontinued effective the date of death or the day preceding the child's sixteenth birthday. Death compensation or pension payable to a child based on service rendered on and after April 21, 1898, shall be discontinued effective the date of death, or the day preceding the child's eighteenth birthday, or the day preceding marriage in those cases in which the child is entitled solely by reason of the definition of the term "child" contained in section 7, Public Law 144, 78th Congress: *Provided,* That the discontinuance of compensation or pension because of school attendance shall be effective as provided in § 4.98 (g).

(ii) Cessation of helplessness: The date of last payment when a determination has been made that helplessness no longer exists.

(iii) Payment to child's mother as remarried widow: From the day preceding the commencement of compensation or pension to a remarried widow when the veteran's child or children under the age of 16 years or helpless in receipt of compensation or pension are members of her family and cared for by her.

(iv) Marriage of helpless child: Payments to or for a helpless child who marries shall be discontinued as of the date preceding the marriage, except that where compensation or pension has been allowed on the basis of a finding that the child was helpless prior to attaining the age of 16 years and the award was approved prior to April 1, 1944, the presumption that the helpless condition has ceased may be overcome by positive proof of continuing helplessness. (Pub. Law 762, 80th Cong.)

(b) *Mother or father; discontinuance for death or cessation of dependency.* From the date of death or, if no longer dependent, from the date dependency ceased to exist. (Rev. Stat. 4707 as amended by the act of June 27, 1890, Rev. Stat. 4708)

(c) *Discontinuance for residence in enemy-controlled territory.* See § 4.86 (I). (Secs. 8, 12, 13, 14, 17 Stat. 569, 570, 571, sec. 1, 22 Stat. 345, secs. 1, 3, 26 Stat. 182, sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 382, 1362, sec. 1, 57 Stat. 554, 58 Stat. 108, 186, 797, Pub. Law 762, 80th Cong.; 38 U. S. C. 23, 37, 191, 200, 203–205, 281, 288, 364a, 381, 381a, 381c, e, f, 471a–2, 727)

CROSS REFERENCES: *Discontinuance under the act of December 21, 1893 (thirty-day notice).* (See § 3.1135 of this chapter.) *Renouncement.* (See § 4.54.)

§ 4.86 *Public No. 2, 73d Congress (act of March 20, 1933), as amended; sections 28 and 31, Title III, Public No. 141, 73d Congress (act of March 28, 1934), as amended; Public No. 484, 73d Congress (act of June 28, 1934), as amended; and Pub. Law 301, 79th Cong. (act of February 18, 1946).* Where death pension or compensation has been awarded under the provisions of Public No. 2, 73d Congress, or section 28 or 31, title III, Public No. 141, 73d Congress, or Public No. 484, 73d Congress, as amended, the effective date of reduction or discontinuance of such death pension or compensation shall be in accordance with the facts found, except that:

(a) *Reduction or discontinuance as to rates.* When reduction or discontinuance is effected as to rates, such reduction or discontinuance shall be effective the last day of the month in which the reduction or discontinuance is approved. (38 U. S. C. ch. 12, Reg. 2 (a) Part I, par. III (b).)

(b) *Remarriage or death of widow.* (1) Discontinuance of pension or compensation because of remarriage or death of a widow shall be effective the date next preceding the date of her remarriage, or upon the date of her death (38 U. S. C. ch. 12, Reg. 2 (a) part I, par. III (d)), except

(2) Discontinuance of pension or compensation because the widow is estopped to deny remarriage shall be effective the date of last payment.

(c) *Child reaching eighteen, marrying, dying or entering military or naval service.* (1) Discontinuance of pension or compensation because of a child's reaching the age of 18 years, or being married, or dying shall be effective the date next preceding the eighteenth birthday or next preceding the date of marriage, or will be effective upon the date of death: *Provided,* That where an award to a widow is subject to reduction because of one of these contingencies, her award will be payable at the reduced rate effective the date of the child's eighteenth birthday, the date of marriage, or the day following the date of the child's death. (38 U. S. C. ch. 12, Reg. 2 (a), part I par. III (e).)

(2) In those cases in which a child enters active military or naval service prior to his eighteenth birthday and an additional amount on behalf of the child is included in a widow's award, the additional amount will continue to be paid to her. In those cases in which payments are being made to a fiduciary for a child, payments to the fiduciary will continue. Otherwise, payment of any amounts due will be made to the child, after ascertaining his current address. No further claim need be executed by the child.

(d) *Helpless child; school child.* Pension or compensation to or for an unmarried child who is over the age of 18 years shall be discontinued:

(1) If permanently incapable of self-support by reason of physical or mental defect, the date of last payment when a determination has been made that helplessness no longer exists;

(2) The last day upon which the child attended school, when the child has been pursuing a course of instruction at a school, college, academy, seminary, technical institute, or university particularly designated by him and approved by the administrator. (See § 4.98 (c) and (g) and § 4.120.)

(e) *Widow's award; school child.* (1) Where an additional allowance is being paid to a widow for a child or children and information is received showing a definite date that a child has died, married, or discontinued school, an amended award will be approved immediately reducing payments to the widow accordingly, as provided by paragraphs (c) and (d) of this section. If a definite date is not shown, the award to the widow will be discontinued as of the date of last payment and information furnished that payments will not be resumed until the necessary evidence to show death, marriage, or termination of schooling has been submitted, except that if the notice shows the month but not the exact date of the happening of the contingency the award will be adjusted as of the first day of such month.

(2) When an amended award is approved under the criteria set forth in the paragraph (e) (1) of this section, evidence will be requested to establish the exact date of death, marriage, or discontinuance of school attendance, and information furnished the widow that unless the evidence is received within 30 days her award will be discontinued. A diary will be maintained to insure appropriate action being taken at the expiration of the 30-day period.

(3) If the evidence establishes a different date of death, marriage, or discontinuance of school attendance, the award will be amended further to reflect the correct date of the happening of the contingency.

(f) *Mother or father, death or cessation of dependency.* Pension or compensation to a dependent mother or father shall be discontinued as of the date of death, or, if no longer dependent, as of the date of last payment. Determination of continuance of dependency and discontinuance for nondependency or failure to file dependency evidence, see § 3.286 of this chapter.

(g) *Income limitations under Veterans' Regulation No. 1 (a), Part III (38 U. S. C. ch. 12) and Public No. 484, 73d Congress (act of June 28, 1934), as amended.* (1) Whenever the annual income of any unmarried person in receipt of death pension under Veterans' Regulation No. 1 (a), Part III, or Public No. 484, 73d Congress (and as amended by Public No. 844, 74th Congress, Public No. 304, 75th Congress, Public No. 514, 75th Congress, Public No. 198, 76th Congress, Public Law 312, 78th Congress, and Public Law 483, 78th Congress), exceeds $1,000, or the annual income of any married person or any person with minor children in receipt of such pension exceeds $2,500, the award of pension shall be discontinued from the date of last payment.

(2) A follow-up will be maintained with respect to questionnaires forwarded to payees for the purpose of determining the amount of annual income, as follows: If at the expiration of 30 days, or 60 days if payee resides without the continental limits of the United States, the questionnaire is not returned, another will be forwarded; if the questionnaire is not returned at the expiration of the second 30 days, or 60 days if the payee resides without the continental limits of the United States, the award will be discontinued as of the date of last payment. (See also §§ 3.228, 3.293, 3.1163 of this chapter and Veterans' Administration adjudication procedure.

(h) *Fraud.* Where, subsequent to the approval of an award, fraud is shown to have been committed prior to the approval of such award by the person receiving pension or compensation or with his or her knowledge, the effective date of discontinuance shall be as of the effective date of the award to such person. If the fraud was committed subsequent to the approval of the award the effective date of discontinuance shall be as of the date of commitment of the fraud.

(i) *Beneficiary resident in enemy-controlled territory.* In a claim for accrued benefits, where a claim and evidence to show that neither the claimant nor the deceased person was guilty of any of the offenses enumerated in section 4, Public Law 144, 78th Congress, was not filed prior to August 8, 1947, discontinuance of death pension or compensation under section 5 of Public Law 144, 78th Congress, shall be effective July 12, 1943, on an award to any person not a citizen of the United States who was located in the territory of or under the military control of an enemy of the United States or of any of its allies. As to recommencement of payments, see § 4.88 (e).

(j) *Commonwealth Army of the Philippines.* In those cases in which an award was approved prior to February 18, 1946, predicated upon service in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, awards of death benefits predicated upon nonservice-connected death shall be discontinued effective February 17, 1946, and awards of death benefits predicated upon service-connected death at a dollar rate shall be reduced to authorize payment effective February 18, 1946, at the rate of one Philippine peso for each United States dollar authorized under the law. (Public Law 301, 79th Congress.) (Secs. 1, 4, 9, 28, 32, 48 Stat. 8, 9, 10, 524, 526, secs. 3, 5, 11, 57 Stat. 554, 555, 556, sec. 5, 58 Stat. 804, 60 Stat. 874; 38 U. S. C. 503 (c), 701, 704, 709, 722, 729, 729a, 734, ch. 12 note)

CROSS REFERENCES: *Renouncement.* (See § 4.54.)

Receipt of active service or retirement pay. (See § 3.299 of this chapter.)

§ 4.88 *Recommencement of death pension or compensation.* Death pension or compensation previously discontinued will be recommended as follows:

(a) *Recommencement after discontinuance under section 4706, Revised Statutes.* A widow whose pension has been discontinued under section 4706, Revised Statutes, shall be restored to the rolls from the sixteenth birthday of the youngest child of such widow and the veteran, provided her title has not been forfeited under the act of August 7, 1882.

(b) *Recommencement after discontinuance because of income.* (1) In any case where a widow's award has been discontinued because of income and title is re-established by reason of the school attendance or helplessness of a child, the effective date of recommencement of benefits to the widow will be governed by the rules prescribed by § 4.98 or § 4.86 (d), as the case may be.

(2) In any case where a widow's, or child's award has been discontinued because of income and title is re-established by reason of reduction in income, the effective date of recommencement will be governed by § 3.228 of this chapter.

(c) *Recommencement after discontinuance for failure to file dependency evidence or information.* See § 3.286 of this chapter.

(d) *Recommencement after discontinuance because of failure to file annual income questionnaire.* See Veterans' Administration adjudication procedure.

(e) *Recommencement of awards to foreign beneficiaries.* In any claim where payments of death pension or compensation have been discontinued under section 5, Public Law 144, 78th Congress, because a beneficiary who was not a citizen of the United States was a resident in the territory of or under the military control of an enemy of the United States or of any of its allies, or where checks to which the beneficiary was entitled were placed in the special deposit account entitled "Secretary of the Treasury, Proceeds of Withheld Foreign Funds" or covered into miscellaneous receipts pursuant to the provisions of Public No. 828, 76th Congress, payment of such amounts shall be made upon the filing of a new claim accompanied by evidence satisfactory to the Administrator of Veterans Affairs showing that the claimant was not guilty of any of the offenses enumerated in section 4 of Public Law 144, 78th Congress: Mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies: *Provided*, That a claim as required by this paragraph filed prior to August 7, 1946, shall be considered a claim for the purposes of Public Law 622, 79th Congress: *Provided further*, That where an award is subject to discontinuance under the provisions of § 4.68 (i), no pension or compensation shall be paid for any period prior to the date of receipt of such claim: *Provided further*, That no payments shall be made to a citizen or subject of Germany or Japan while residing in Germany or Japan (Pub. Law 622, 79th Cong.). See § 4.86 (i) as to discontinuance of payments. (Sec. 12, 17 Stat. 570, sec. 9, 48 Stat. 10 sec. 3, 57 Stat. 554, 60 Stat. 874; 38 U. S. C. 200, 709, 729a, ch. 12 note)

EFFECTIVE DATES OF READJUSTMENT IN RATES TO DEPENDENTS

§ 4.90 *Readjustment after contingency. Public No. 166, 69th Congress (act of May 1, 1926), as reenacted by Public No. 269, 74th Congress (act of August 13, 1935), and as amended, Public No. 2, 73d Congress (act of March 20, 1933), as amended, sections 28 and 31, Public No. 141, 73d Congress (act of March 28, 1934), as amended, and Public No. 484, 73d Congress (act of June 28, 1934), as amended.* (a) In any claim under the above cited acts in which death pension or compensation is being paid the widow and other dependents of a person who served and an adjustment in the rates payable becomes necessary because of the death, remarriage, or forfeiture of title of one or more of the beneficiaries, readjustment will be made without the filing of a formal application. The rates for the remaining beneficiary or beneficiaries shall be the amount which would have been payable if they had been the sole original beneficiaries and will become effective the day following the date of discontinuance of payments under the prior award, provided the evidence necessary to effect an adjustment or resumption of payments is received in the Veterans' Administration within 1 year from the date of request therefor; if the evidence is not received within 1 year from the date of request therefor, payments will be authorized from the date of receipt of the evidence. (See § 3.286 of this chapter.)

(b) (1) If a widow with a child or children has been paid compensation or pension subsequent to her remarriage at a rate in excess of that to which the child or children were entitled in their own right, an amended award will be made to the widow authorizing payment to her in her own right of the amount to which she was entitled for herself and child or children until the date next preceding the date of her remarriage and the amount to which the child or children would have been entitled if an award had been made to them from that date to the date of last payment to the widow. Thereafter, if in order, an award will be made to or in behalf of the child or children.

(2) If the rate payable for children in their own right is in excess of that paid to the widow, her award will be discontinued effective date of last payment and the award to the children will be made to commence the date of the widow's remarriage. The rate payable will be the difference between the amount paid to the widow and the amount payable for children in their own right, the available balance being proportionately divided. The full rate to which each child is entitled will be awarded commencing the day following the date of last payment to the widow. (Secs. 4, 9, 48 Stat. 9, 10; 38 U. S. C. 704, 709)

APPORTIONMENT OF DEATH PENSION OR COMPENSATION

§ 4.91 *Apportionment*—(a) *Conditions under which apportionment may be made.* Death compensation or pension

payable under any law or veterans regulation administered by the Veterans' Administration shall be apportioned where the child or children of a deceased person who served are not in the actual or constructive custody of the widow, except that no apportionment of death compensation or pension payable to the widow for herself and child or children will be made for any child who enters the active military or naval service of the United States (§ 4.86 (c)); or, where the child or children are separated from the widow, due to her incompetency, and a fiduciary has been appointed for the widow, who is providing properly for the children from the widow's estate or income voluntarily or pursuant to a decree of a court of competent jurisdiction. The apportionment of a widow's pension or compensation will not be considered a reduction thereof.

(b) *Effective dates of apportionment.* (1) The effective date of the apportionment will be the first day of the month next succeeding that in which notice was received in the Veterans' Administration that the child or children are not in the actual or constructive care and custody of the widow: *Provided,* That where prior to the initial award to the widow the lack of custody in the widow is shown, the compensation or pension will be apportioned in accordance with the facts found for all periods affected: *Provided,* That where there was a running award on October 17, 1940, under the laws granting pensions to dependents of persons who served prior to April 21, 1898, or under the laws re-enacted by Public No. 269, 74th Congress, the notice hereinabove referred to must be received in the Veterans' Administration subsequent to October 17, 1940: *Provided further,* That pension payable under such laws shall not, in any event, be apportioned for any period prior to October 17, 1940.

(2) The rates of apportionment outlined in this paragraph, subject to the provisions of § 4.92, apply to all periods affected both prior and subsequent to the date the award, either original or amended, is approved.

(c) *Rates payable*—(1) *General*—(i) *Compensation.* For periods on and after September 1, 1948, in awards of death compensation at the rates provided by Public Law 868, 80th Congress, the rate payable for the widow shall be $60 monthly where the death of the veteran was due to wartime service or $48 monthly where the death of the veteran was due to peacetime service, and the remainder of the amount which would be payable to the widow if all children were in her custody will be equally divided among the children. The amount payable on behalf of any child or children in the widow's custody will be added to the widow's share. For periods prior to September 1, 1948, and where compensation is payable at a protected rate under section 20, Public No. 78, 73d Congress or section 28, Public No. 141, 73d Congress, the rule outlined in subdivision (ii) of this subparagraph shall apply.

(ii) *Pension.* Public No. 484, 73d Congress as amended and Veterans Regulation No. 1 (a), Part III (38 U. S. C. Ch. 12). Apportionment of death shall be computed as follows: The share for all children for whom claim is filed will be that amount to which they would be entitled if there were no widow. The widow's share will be the difference between the children's share and the total amount payable on account of the widow and all children for whom claim is filed. In all instances, the amount payable to or for the children will be divided equally among the children. The share for any children in the widow's custody will be added to the widow's share. If, in the application of this rule, the widow's share would be increased to an amount greater than the amount to which she would be entitled if there were no children, then her share will be the amount to which she would be entitled if there were no children, and the difference between the amount of such widow's share and the entire amount payable for the widow and children will be the children's share. If, however, in the application of this rule, the widow's share would be reduced to an amount lower than 50 percent of that to which she would be entitled if there were no children, then her share will be 50 percent of the amount to which she would be entitled if there were no children, and the difference between the amount of such widow's share and the entire amount payable for the widow and children will be the children's share.

(iii) *Civil War pension.* When pension is payable under Public No. 190, 66th Congress (act of May 1, 1920), as amended, including Public Law 270, 80th Congress (act of July 30, 1947), the apportioned monthly rates shall be as follows:

	On and after Oct. 17, 1940	On and after Sept. 1, 1947
Widow	$21.00	$25.20
Child	15.00	18.00
Each additional child	6.00	7.20
Total amount for children equally divided.		

The additional monthly payment of $10.00 provided by the acts of May 23, 1928, and June 9, 1930, which was increased to $12.00 effective Sept. 1, 1947, by the act of July 30, 1947 (Pub. Law 270, 80th Cong.), because of attained age of a widow shall be added to the widow's share.

(iv) *Indian war pension.* When pension is payable under Public No. 723, 69th Congress (act of March 3, 1927) as amended, including Public Law 393, 80th Congress (act of January 19, 1948), the apportioned monthly rates shall be as follows:

	On and after Oct. 17, 1940	On and after Mar. 1, 1948
Widow	$21.00	$25.20
Child	15.00	18.00
Each additional child	6.00	7.20
Total amount for children equally divided.		

The additional monthly payment of $10.00 provided by the act of Mar. 3, 1944 (Pub. Law 245, 78th Cong.), which was increased to $12.00 effective Mar. 1, 1948, by the act of January 19, 1948 (Pub. Law 398, 80th Cong.), because of attained age of a widow shall be added to the widow's share.

(v) *Spanish-American War (Including Boxer Rebellion and Philippine Insurrection) Pension. Service act, reenacted by Public No. 269, 74th Congress and amended.* When pension is payable under Public No. 166, 69th Congress (act of May 1, 1926), as reenacted by Public No. 269, 74th Congress, and as amended, including Public Law 270, 80th Congress (act of July 30, 1947), the apportioned monthly rates shall be as follows:

	On and after Oct. 17, 1940	On and after Sept. 1, 1946	On and after Sept. 1, 1947
Widow	$21.00	$28.00	$33.60
Child	15.00	18.00	21.60
Each additional child	6.00	6.00	7.20
Total amount for children equally divided.			

The additional monthly payment of $10 provided by the act of March 1, 1944 (Pub. Law 242, 78th Cong.), because of attained age of a widow which applies only for the period from April 1, 1944, through August 31, 1946, shall be added to the widow's share.

(2) *Rate for additional beneficiary.* In any case wherein death compensation or pension is being currently paid and claim is filed by or for an additional dependent of the veteran, who is entitled to an apportioned share, no reduction will be made in the current award for any period prior to the first of the month next succeeding that in which the changed award is approved. The amount payable during such period to or for the additional dependent will be the difference between the amount of compensation or pension currently being paid and the total amount payable by reason of including the additional dependent. On and after the first day of the month next succeeding that in which the changed award is approved the total amount of compensation or pension will be apportioned as provided in paragraph (c) (1) of this section.

(d) *Special apportionments.* In any case wherein it is clearly shown by competent evidence that the application of the foregoing provisions of these regulations will result in undue hardship upon the widow or children, and relief can be afforded without undue hardship to other persons at interest, the assistant administrator for claims, in central office, or the director of claims service in a branch office shall determine, without regard to the foregoing provisions of these regulations, the exact amount to be apportioned to each individual in interest. The director, dependents and beneficiaries claims service, in central office cases, or the chief, dependents and beneficiaries claims division, in branch office cases, will make appropriate recommendation to the official authorized to make determinations in such cases. (Secs. 3, 4, 20, 28, 48 Stat. 9, 309, 524, 1281, sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note, 505, 704, 722; Pub. Law 868, 80th Cong.)

§ 4.92 *Changing prior apportionments; discontinuance of apportionments, effective dates*—(a) *Changing prior apportionments*—(1) *When change may be made.* If an award has been made pursuant to a prior apportionment regulation, and a retroactive increase in the total amount payable is in order, the awards will be adjusted in accordance with § 4.91 (c), effective as of the commencement date of the prior apportionment or the date of the increase in the total amount payable, whichever is the later: *Provided,* No overpayment to any payee will result. If an overpayment to any payee will result, the amount of the retroactive increase will be divided equally among the children from the effective date of such increase to the last day of the month in which the action is taken, thereafter applying the rates prescribed in § 4.91 (c).

(2) *When change may not be made.* If an award has been properly made pursuant to a prior apportionment regulation and payment is being made to any payee pursuant to such award, the award will not be disturbed retroactively except as provided in subparagraph (1) of this paragraph. Any adjustment made necessary by reason of a change in regulations will be made effective as of the first day of the month next succeeding that in which the changed award is approved.

(b) *Discontinuance of apportionments, effective dates.* In those cases where death compensation or pension is apportioned between the widow and a child or children and payments have been or are being made to such dependents subsequent to the date of cessation of the condition on which it is predicated, the effective date of discontinuance of the apportioned benefit to the child or children shall be the date of last payment, and the award to the widow will be adjusted accordingly: *Provided,* That in the event of death the effective date shall be the date of death: *Provided further,* That upon attainment by a child of an age (16, 18 or 21) after which compensation or pension is no longer payable the effective date shall be the day preceding the date of attainment of such age: *Provided further,* That upon marriage of a child the effective date shall be the date preceding the date of marriage: *Provided further,* That when a child discontinues a course of instruction the effective date will be the last day of attendance. (38 U. S. C. ch. 12, Reg. 6 (c).) (Sec. 3, 54 Stat. 1195; 38 U. S. C. 49a note)

§ 4.93 *Awards where all beneficiaries do not file a claim on the same date; fractions of one cent.* (a) *Awards where some but not all dependents apply.* In any case where claim is or has been filed by or on behalf of one or more dependents, but is not filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods affected at the rates and in the same manner as though there were no other dependents.

(b) *Computation of rate for additional beneficiary.* In any case wherein death compensation or pension is being currently paid and claim is filed by or for an additional dependent, a retroactive adjustment in the current award will be made, provided no overpayment will result. If an overpayment would result, the current award will be reduced as of the first of the month next succeeding that in which the changed award is approved, and the amount payable prior to the date of reduction to or for such additional dependent will be the difference between the amount of compensation or pension currently being paid and the total amount payable by reason of including the additional dependent. On and after the first day of the month next succeeding that in which the changed award is approved, the additional dependent will be entitled to his full share. (For apportioned awards, see § 4.91 (c) (2).)

(c) *Fractions of 1 cent, in awards.* In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

PAYMENT OF PENSION OR COMPENSATION TO A CHILD WHEN IT REACHES 16 OR 18 YEARS OF AGE

Payment of Pension or Compensation Based Upon Helplessness

§ 4.94 *Helpless child.* For the purpose of the laws authorizing the payment of death compensation or pension, the term "helpless child" shall mean a child who was permanently incapable of self-support by reason of physical or mental defect at the date of attaining the age of 16 or 18 years, whichever is applicable, and at the date of filing claim. The requirement that a child be "insane, idiotic, or otherwise mentally or physically helpless" as a prerequisite to the continuance of benefits after a child attains the age of 16 years will be considered as having been met when the evidence shows that the child is permanently incapable of self-support by reason of physical or mental defect. (Sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 382, 1362, sec. 7, 57 Stat. 555, sec. 1, 58 Stat. 186; 38 U. S. C. 37, 288, 364 a, 381 a, ch 12 note)

§ 4.95 *After age 18.* Pension or compensation otherwise payable on behalf of a helpless unmarried child will be continued from the child's eighteenth birthday without the filing of a formal claim, provided helplessness is alleged prior to or within 1 year after the date on which the child attains the age of 18 years, and evidence establishing entitlement is received within 1 year from the date of request by the Veterans' Administration. If helplessness is not alleged prior to or within 1 year after the child attains the age of 18 years, such benefits will be continued from the date of receipt in the Veterans' Administration of a communication from or on behalf of the child, alleging helplessness, provided evidence establishing entitlement is received within 1 year from the date of request by the Veterans' Administration. (Sec. 7, 57 Stat. 555; 38 U. S. C., ch. 12 note)

§ 4.96 *After age 16*—(a) *Service prior to April 20, 1898.* Pension or compensation on behalf of a helpless unmarried child may be continued from the child's sixteenth birthday without the filing of a formal claim, provided helplessness was alleged in the original application; otherwise a formal application will be required.

(b) *Service in Spanish-American War, Boxer Rebellion, or Philippine Insurrection*—(1) *Helplessness at 16.* Pension or compensation may be continued on behalf of a legitimate unmarried child who became helpless prior to attaining the age of 16 years, without the filing of a formal claim, provided helplessness is alleged prior to or within 1 year after the date on which the child attains the age of 16 years, and evidence establishing entitlement is received within 1 year from the date of request by the Veterans' Administration. If helplessness is not alleged prior to or within 1 year after the child attains the age of 16 years, such benefits will be continued from the date of receipt in the Veterans' Administration of a communication from or on behalf of the child alleging helplessness, provided evidence establishing entitlement is received within 1 year from the date of request by the Veterans' Administration. Pension under the act of May 1, 1926, as re-enacted, will be payable at the rate set forth in § 4.134 (a) (1) or (2) (i). Compensation will be payable at the rate set forth in § 4.124. (Sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 382, 1362, sec. 1, 58 Stat. 186; 38 U. S. C. 37, 288, 364a, 381a)

(2) *Helplessness at 18.* Where the child's entitlement to pension under the act of May 1, 1926, as re-enacted, arises pursuant to sections 1 and 7, Public Law 144, 78th Congress, the rate payable will be that set forth in § 4.134 (a) where there is a widow, or the rate set forth in § 4.134 (a) (2) (ii) where there is no widow. Compensation will be payable at the rate set forth in § 4.124.

(c) *Public Law 280, 78th Congress (act of April 1, 1944).* The continuance of pension or compensation is authorized under the provisions of Public Law 280, 78th Congress, without regard to whether the child was under or over the age of 16 years at the date of the veteran's death, if helplessness existed at the date of attaining the age of 16 years and exists at the date of filing claim. These benefits terminate upon marriage, except that awards approved prior to April 1, 1944, are not subject to this provision. The application of this law is restricted to claims based on service rendered prior to April 20, 1898, or based on service rendered in the Spanish-American War, Boxer Rebellion, or Philippine Insurrection, where the child meets the definition of a child contained in the act of May 1, 1926, as re-enacted, and without reference to section 7, Public Law 144, 78th Congress.

Payment of Pension or Compensation Based on School Attendance

§ 4.98 *Effective dates.* Except as outlined in § 4.0 pertaining to original claims, the effective dates of payments on account of school attendance will be as follows:

(a) *When child reaches age of 18 years while pursuing an approved course.* Payments of pension or compensation under authority of § 4.94 (b) will be effective

on the child's eighteenth birthday, if at that time the child is pursuing a course of instruction as provided in § 4.94, and evidence showing the pursuance of such course is received within 1 year from the date the child attained the age of 18 years. If a child who is pursuing a course attains the age of 18 years before the evidence showing pursuit of an approved course is received, the award will be terminated in accordance with regulations; but will be reopened and continued pursuant to the provisions of this paragraph if such evidence is received within the year specified. If such evidence is not received within 1 year, the effective date of the award will be the date of receipt of evidence showing pursuit of an approved course.

(b) *When child is not pursuing an approved course on eighteenth birthday.* If the child was not pursuing an approved course of instruction at the time it attained the age of 18 years but subsequently actually commences an approved course of instruction and evidence thereof is received within 1 year of the commencement of the course, the effective date of the award will be the date of commencement of attendance: *Provided,* That if such evidence is not received within 1 year, the effective date of the award will be the date of receipt of evidence showing pursuit of an approved course: *Provided further,* That if the child attains the age of 18 years during a vacation period immediately following a period of school attendance and enters school at the end of the vacation period, payment of pension or compensation will be authorized from the date the child attains the age of 18 years, as provided in § 4.98 (a).

(c) *Holiday or vacation periods*—(1) *Continuance during holidays or vacation period.* In a claim where evidence is submitted showing that the child was attending a course of instruction in an approved institution at the close of a regular school term and intends to resume attendance at the next regular term, either in the same or a different institution, the award will be continued during the intervening holiday or vacation period, if all other requirements are met: *Provided,* That where the child does not actually resume attendance, the award will be discontinued as of the day preceding the date of such failure to pursue a course or as of the date of last payment, whichever is the earlier: *Provided further,* That payments will not be authorized retroactively for the vacation period where the child fails to resume attendance at the end of such period.

(2) *Evidence received during vacation period.* Where evidence is received during a holiday or vacation period, awards continuing or resuming payments will not be withheld until the vacation period has elapsed and commencement of the course has been reported by the school but will be approved without delay if otherwise in order.

(3) *Notice during vacation period that course will not be commenced.* Upon receipt of notice during a vacation or holiday period that a child will not commence or resume attendance at the next regular term, the ending date of the school award will be the date of last payment but not prior to the date of expiration of the last regular term nor subsequent to the day preceding the date of commencement of the next regular term.

(4) *Report of failure to commence or resume course*—(i) *If award has been made.* If notice as described in the preceding subparagraph has not been received, and it is ascertained after the close of the holiday or vacation period that the child has failed to commence or resume an approved course at the next regular term, or if the required evidence of attendance is not received from the school within 10 days after the date of follow-up request after the date of commencement, payments will be discontinued effective the day preceding the date on which the course was to have been commenced or resumed or the date of last payment, whichever is the earlier: *Provided,* That if the reason for the failure to commence or resume the course was the marriage of the child, the ending date will be the day preceding the marriage: *Provided further,* That if no payments have been made, the award will be reduced or discontinued from its effective date but not prior to the date of expiration of the last regular term.

(ii) *If award has not been made.* If notice as provided in subparagraph (3) of this paragraph or report of failure to commence or resume a course following a vacation or holiday period is received before an award has been made, pursuant to approval of a course of instruction, benefits that may be payable by reason of prior pursuit of an approved course will not be authorized through the vacation or holiday period.

(5) *Resumption of payments after discontinuance for failure to submit notice of commencement.* Payments reduced or discontinued pursuant to subparagraph (4) (i) of this paragraph for failure to submit VA Form 674b within 10 days from the date of request therefor, will be resumed, if otherwise in order, from the effective date of such reduction or discontinuance upon receipt within 1 year from that date of VA Form 674b showing attendance at the commencement of term for which such benefits were denied.

(6) *Ending dates of school awards.* If VA Forms 8–674 and 8–674a show the year, month, and day on which it is expected the course will be terminated, the ending date of the school award will be the earliest date shown. If one form shows only the month and year and the other shows a definite date in an earlier month, the definite date will be accepted. In all other instances, the earliest month shown in either form will be accepted, and the ending date of the school award will be the last day of the preceding month.

(d) *Discontinuance and recommencement of a course.* If a course of instruction is discontinued at any time and thereafter recommenced, the effective date of the renewed award will be the date of recommencement of attendance, provided the evidence of resumption of attendance is received within 1 year. If evidence of the commencement of the course is not received within 1 year, the effective date of the award will be the date of the receipt of the evidence.

(e) *Transfers to other institutions.* In those cases in which payments have been or are being made on the basis of a course in an institution which meets with the approval of the Veterans' Administration and it is shown that during all or a portion of such period the child was pursuing a different course in the same institution or a course in another institution, action of approval or disapproval thereof may be taken at any time, and, if approved, payments previously made covering the period of attendance in such course will not be disturbed.

(f) *Apportionment.* In any case wherein death pension or compensation is currently being paid and an apportioned award is to be made for a child who commences or recommences an approved course of instruction, the rate payable to or for such child from the eighteenth birthday, date of commencement of school attendance, date of application, or the date of receipt of such evidence, whichever is applicable under paragraphs (a), (b), (c), or (d) of this section, to the first of the month next succeeding that in which the changed award is approved shall be only the difference between the amount of pension or compensation currently being paid and the total amount payable by reason of including such child among the dependents for whom benefits are being paid. On and after the first of the month next succeeding that in which the changed award is approved, the pension or compensation will be apportioned as provided in § 4.91 (c).

(g) *When child marries, ceases to attend course, or reaches age of 21 years.* Payments of pension or compensation under this paragraph will terminate upon the date preceding the date of marriage or, except as provided in § 4.98 (c), upon the last day which the child attended school, but in no event will pension or compensation be paid for a period beyond the day preceding the child's twenty-first birthday. (Sec. 7, 57 Stat. 555; 38 U. S. C., ch. 12 note)

(h) *Evidence requirements*—(1) *General.* The requirement that evidence of school attendance must be filed will be considered as having been met when notice of such school attendance, meeting the requirements of an informal claim, is received, provided the necessary formal evidence on VA Forms 8–674 and 8–674a is filed within 1 year from the date of request.

(2) *Accrued benefits only.* When a claim for accrued benefits is filed by or on behalf of a veteran's child over 18 but under 21 years of age who was pursuing a course of instruction at the time of the payee's death and payment of accrued benefits only is involved, evidence of school attendance will consist of VA Form 674c executed jointly by the child and the school official. When the payee's death occurred during a school vacation period, the requirements will be considered to have been met if the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the payee's death.

FORFEITURES

§ 4.100 *Abandonment of children by widow.* For the purposes of the General Law, the service pension acts granting pension to widows and children of veterans of the Civil and Indian Wars, and the laws re-enacted by section 30, title III, Public No. 141, 73d Congress (act of March 28, 1934), and Public No. 269, 74th Congress (act of August 13, 1935), if any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death and a child or children under 16 years of age by such widow, and it shall be duly certified under seal by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct to have the custody of the same, on presentation of satisfactory evidence thereof to the Administrator of Veterans' Affairs, no pension shall be allowed to such widow until such child or children shall have attained the age of 16 years, and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid. (R. S. 4706; 38 U. S. C. 200)

§ 4.102 *Open and notorious adulterous cohabitation.* For the purposes of the General Law, the service pension acts granting pension to widows of Civil and Indian War veterans, and the pension laws re-enacted by Public No. 141, 73d Congress (act of March 28, 1934), and Public No. 269, 74th Congress (act of August 13, 1935), the open and notorious and adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation. (R. S. 4702; 38 U. S. C. 191 and 199)

§ 4.104 *Forfeitures incurred prior to March 20, 1933.* (a) For the purposes of Public No. 2, 73d Congress (act of March 20, 1933), all penalties or forfeitures incurred prior to March 20, 1933, under the acts repealed by section 17 thereof, will be given the same effect as if said repeal had not been made, and any person who forfeited rights to benefits under any such acts shall not be entitled to any benefits under title I of Public No. 2, 73d Congress (act of March 20, 1933, section 11).

(b) A forfeiture under section 4706, Revised Statutes, is a limited forfeiture only, and such forfeiture does not bar a widow from receiving pension under Public No. 2, 73d Congress (act of March 20, 1933), after the youngest child attains the age of 16 years. (Sec. 12, 17 Stat. 570, sec. 11, 48 Stat. 10, R. S. 4706; 38 U. S. C. 200, 717 note)

§ 4.106 *Failure to claim pension for three years.* For the purposes of the General Law, the service pension acts granting pension to widows of Civil and Indian War veterans, and the pension laws re-enacted by section 30, title III, Public No. 141, 73d Congress (act of March 28, 1934), and Public No. 269, 74th Congress (act of August 13, 1935), the failure of any pensioner to claim pension for 3 years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, or otherwise, and the pensioner's name shall be stricken from the list of pensioners, subject to the right of restoration to the same on a new application by the pensioner, or, if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension. (R. S. 4719; 38 U. S. C. 53)

§ 4.107 *Forfeiture of benefits by a veteran as it relates to claims for death compensation.* Forfeiture of benefits by a veteran under the provisions of section 504, World War Veterans' Act, 1924, as amended, or section 15 of Public No. 2, 73d Congress, shall not preclude (a) payments of death compensation benefits for service-connected death or (b) payments of death compensation benefits, on and after October 17, 1940, under Public No. 484, 73d Congress, as amended: *Provided*, That no compensation or pension shall be paid to any dependent who has participated in the fraud for which the forfeiture was imposed. (Section 9, Public No. 866, 76th Congress, act of October 17, 1940) In forfeiture cases, death compensation benefits under Public No. 484, as amended, may not be awarded for any period prior to October 17, 1940. (Sec. 9, 54 Stat. 1196; 35 U. S. C. 555a, 715a)

§ 4.108 *Forfeiture for treasonable acts.* Any person shown by evidence satisfactory to the Administrator of Veterans Affairs to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies shall forfeit all accrued or future benefits under laws administered by the Veterans' Administration pertaining to gratuities for veterans and their dependents: *Provided*, That any part of such benefits may be apportioned and paid to the dependents of such person, not exceeding the amount to which each dependent would be entitled if such person were dead. (Section 4, Pub. Law 144, 78th Cong., act of July 13, 1943) (Sec. 4, 57 Stat. 555; 38 U. S. C. 728)

CROSS REFERENCE: *Other forfeitures.* See § 3.69.

PROTECTED AWARDS; DEATH CASES

§ 4.109 *Awards for service-connected death prior to March 20, 1933.* Pursuant to section 17 of Public No. 2, 73d Congress (act of March 20, 1933), and of section 20, Title I, Public Law 78, 73d Congress (act of June 16, 1933), in death pension or compensation claims allowed prior to March 20, 1933, based on a finding that the veteran died as the result of a service-connected disability, it will be presumed that the prior decision, holding that the disease or injury causing the death of the veteran was the result of active service or was not the result of the veteran's misconduct or that the discharge was not dishonorable or that the relationship was properly established, was a proper decision and that every award to or for any individual as the widow, child, or dependent parent of a deceased veteran of the World War who was in active service on or after April 6, 1917, and before July 3, 1921, was a proper award, and no reduction or discontinuance thereof will be made except by reason of marriage or death of the widow or child, or death or cessation of dependency of the parent, or the attainment of the age of eighteen years or twenty-one years or cessation of school attendance of the child. This presumption will be effective in all instances in the absence of an affirmative showing that the prior decision was clearly and unmistakably erroneous under the criteria in effect when it was rendered. (38 U. S. C. ch. 12, Reg. 4) (Sec. 4, 17, 48 Stat. 9, 11, sec. 20, 48 Stat. 309; 38 U. S. C. 704, 718, 722)

§ 4.110 *Awards under section 28, Title III, Public No. 141, 73d Congress.* For the purposes of section 28, Title III, Public No. 141, 73d Congress (act of March 28, 1934), in no event shall death compensation being paid under the World War Veterans' Act, 1924, as amended, on March 19, 1933, be reduced or discontinued, whether the death of the veteran on whose account compensation is being paid was directly or presumptively connected with service, except for fraud misrepresentation of a material fact or unmistakable error as to conclusion of fact or law. (Sec. 28, Public No. 141) (Sec. 28, 48 Stat. 524; 38 U. S. C. 722)

§ 4.111 *Protection of awards to widows of World War I veterans granted prior to August 16, 1937.* In no event shall section 4 of Public No. 304, 75th Congress (act of August 16, 1937), be construed so as to require a reduction or discontinuance of death compensation to widows of deceased World War veterans to whom death compensation payments were authorized prior to the date of enactment of such act. All widows properly on the rolls on the date of enactment of such act shall be entitled to the increased rates authorized in section 3 of such act.

§ 4.112 *Awards under War Risk Insurance Act.* Awards made under the War Risk Insurance Act, where title did not exist under the World War Veterans' Act, 1924, as amended, are protected as to title but are not protected as to rate. (Sec. 602, 43 Stat. 630, secs. 17, 20, 48 Stat. 11, 309; 38 U. S. C. 571, 718, 722)

§ 4.114 *Protection under Veterans' Reg. No. 1 (c) (38 U. S. C, ch. 12).* For the purposes of Veterans' Regulation No. 1 (c), the surviving widow of any deceased person who died as a result of injury or disease incurred in or aggravated by active Coast Guard, military or naval service, in line of duty, who was on March 20, 1933, being paid, except for fraud, mistake or misrepresentation, a pension under general or service pension laws at a rate in excess of the rate authorized under Veterans' Regulation No. 1 (a), Part II, paragraph III, shall from and after January 19, 1934, until death or re-

marriage, be entitled to be paid a pension at the rate authorized under the prior General Law but not more than $30.00 per month. (38 U. S. C. ch. 12, Reg. 1 (c), par. IV.) (Sec. 4, 48 Stat. 9; 38 U. S. C. 704, ch. 12, Reg. 1 (a), Part II, par. IV)

§ 4.116 *Determination of service-connected death cause in claims of widows and dependents of the Spanish-American War veterans allowed service connection under Veterans' Reg. No. 12 (38 U. S. C. ch. 12).* (a) When the presumption of service connection of a disease or injury authorized in Veterans' Regulation No. 12 has resulted in the final allowance of the claim of a veteran of the Spanish-American War, including the Boxer Rebellion and Philippine Insurrection, at the wartime pension rates under Veterans' Regulation No. 1 (a), and the veteran has subsequently died as a result of the presumptively connected disease or injury, the claim of the widow, child or dependent parent of the veteran will be adjudicated and benefits allowed under § 4.122 (a) and/or (b) or § 4.124 (Veterans' Regulation No. 1 (a), Part I), unless it is determined that service connection under Veterans' Regulation No. 12 was granted through clear or unmistakable error, or unless the presumption is clearly rebutted by evidence filed subsequent to the allowance of service connection.

(b) When the presumption of service connection granted during the lifetime of the veteran is clearly rebutted by evidence in the file, received either prior or subsequent to the veteran's death, or where it is determined that the service connection under Veterans' Regulation No. 12 was granted through clear and unmistakable error, that part of the claim based on presumptive service connection will be disallowed. (38 U. S. C. ch. 12, Reg. 12) (Sec. 4, 48 Stat. 9; 38 U. S. C. 704, ch. 12, Reg. 12)

§ 4.117 *Protection of awards to widows of veterans of the Spanish-American War, Boxer Rebellion or Philippine Insurrection granted prior to March 1, 1944.* The provisions of section 4, Public Law 242, 78th Congress, providing that no pension or increase in pension shall be allowed to the widow of a veteran of the War with Spain, Philippine Insurrection or the China Relief Expedition under any law unless there was continuous cohabitation from the date of marriage to the date of the death of the person who served except where there was a separation which was due to the misconduct of or procured by the person who served without the fault of the widow, shall not be construed so as to discontinue any pension granted prior to March 1, 1944. (Sec. 4, 58 Stat. 107; 38 U. S. C. 364h)

RATES OF DEATH PENSION AND COMPENSATION

Rates of Compensation for Death Due to Service

§ 4.122 *Death due to peacetime service*—(a) *Peacetime rate.* (1) Where death resulted from active military or naval service rendered subsequent to March 4, 1861, during time of peace (except as to those instances falling within the purview of paragraph (b) of this section), the following rates are payable:

	Per month	
	Aug 1, 1943, to Aug. 31, 1948	On and after Sept. 1, 1948
Widow	$38.00	$60.00
Widow with 1 child	49.00	80.00
Each additional child	10.00	12.00
Children where there is no widow, total payable equally divided:		
1 child	19.00	46.40
2 children	28.00	65.60
3 children	36.00	84.80
Each additional child	8.00	16.00
Dependent mother or father	30.00	48.00
(Or both), each	20.00	28.00

(2) As to the widow, child or children, the total payable under subparagraph (1) of this paragraph shall not exceed $75.00 for periods prior to August 8, 1946. No limitation as to the amount payable is applicable for periods on and after that date. (Pub. Law 673, 79th Cong.)

(3) The foregoing rates for the period prior to September 1, 1948 are contained in Public Law 690, 77th Congress and section 14 (b), Public Law 144, 78th Congress. The rates on and after September 1, 1948 are authorized by Veterans' Regulation No. 1 (a), Part II, par. III, (38 U. S. C. ch. 12), as amended by section 3, Public Law 868, 80th Congress.

(b) *Wartime rate.* Where death resulted from active military or naval service rendered subsequent to March 4, 1861, during time of peace and from an injury or disease received in line of duty (a) as a direct result of armed conflict or (b) while engaged in extra hazardous service, including such service under conditions simulating war, the rates outlined in § 4.124 are payable. (Veterans' Regulation No. 1 (a), Part II, par. I (c), (38 U. S. C. ch. 12), as amended by Pub. Law 359, 77th Cong. and Pub. Law 868, 80th Cong.)

(c) *Philippine Scouts.* Awards based on service rendered by Philippine Scouts who were enlisted under section 14, Public Law 190, 79th Congress, approved October 6, 1945 (see § 3.1 (c)) shall be paid at the rate of one Philippine peso for each United States dollar authorized to be paid under the law providing for such compensation (Public Law 391, 79th Congress). (55 Stat. 844, sec. 1, 56 Stat. 731, sec. 14b, 57 Stat. 559, 60 Stat. 223, 931 Pub. Law 868, 80th Cong.; 10 U. S. C. 336, 38 U. S. C. 504, 731, ch. 12 note)

§ 4.124 *Death due to wartime service.* (a) (1) Where death resulted from active military or naval service rendered during the Civil War, the Indian wars, the Spanish-American War, including the Boxer Rebellion and Philippine Insurrection, World War I, or World War II, the following rates are payable:

	Per month		
	Aug. 1, 1943, to Aug. 31, 1946	Sept. 1, 1946, to Aug. 31, 1948	On and after Sept. 1, 1948
Widow	$50.00	$60.00	$75.00
Widow with one child	65.00	78.00	100.00
Each additional child	13.00	15.60	15.00
Children where there is no widow, total payable equally divided:			
1 child	25.00	30.00	58.00
2 children	38.00	45.60	82.00
3 children	48.00	57.60	106.00
Each additional child	10.00	12.00	20.00
Dependent mother or father	45.00	54.00	60.00
(Or both), each	25.00	30.00	35.00

(2) As to the widow, child or children, the total payable under subparagraph (1) of this paragraph shall not exceed $100 for periods prior to August 8, 1946. No limitation as to the amount payable is applicable for periods on and after that date. (Pub. Law 673, 79th Cong.)

(3) The foregoing rates for periods prior to September 1, 1948 are contained in section 5, Public No. 198, 76th Congress, as amended by section 10, Public Law 667, 77th Congress; section 14 (a), Public Law 144, 78th Congress; and section 2, Public Law 662, 79th Congress. The rates in section 5, Public No. 198, 76th Congress, originally applied only to World War I cases but were specifically made applicable to cases pertaining to the Spanish-American War, including the Boxer Rebellion and Philippine Insurrection, under the terms of Public Law 242, 77th Congress, and became applicable to cases pertaining to the other wars by reason of the provisions of Veterans' Regulations No. 1 (a), Part II, par. 1 (c) (38 U. S. C. ch. 12), as amended by Public Law 359, 77th Congress. The rates on and after September 1, 1948, as to cases pertaining to Spanish-American War, Boxer Rebellion and Philippine Insurrection, World War I and World War II are contained in Veterans' Regulation No. 1 (a), Part I, par. IV (38 U. S. C. ch. 12), by section 1, Public Law 868, 80th Congress, and are applicable to cases pertaining to other wars by virtue of the provisions of section 2, Public Law 868, 80th Congress.

(b) Awards based on service rendered with the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the United State pursuant to the military order of the President of the United States dated July 26, 1941, and awards, based on service rendered by Philippine Scouts who were enlisted under section 14, Public Law 190, 79th Congress, approved October 6, 1945 (see § 3.1 (c) of this chapter) shall be paid at the rate of one Philippine peso for each United States dollar authorized to be paid under the law providing for such compensation. (Pub. Laws 301 and 391, 79th Cong.) (Sec. 5, 53 Stat. 1070, sec. 14a,

57 Stat. 558, 60 Stat. 908, 931 Pub. Law 868, 80th Cong.; 38 U. S. C. 471a–3, 472b, 504, 731, 739, ch. 12 note)

§ 4.125 *Rates under Public No. 140, 73d Congress, for death resulting from carrying the mail by air.* The rates payable under this act are the same as those provided in § 4.124. (48 Stat. 508, 60 Stat. 908; 38 U. S. C. 471a–3, 739, ch. 12 note)

§ 4.126 *Death due to Veterans' Administration hospital treatment, etc.*— (a) *Rates under section 31, Title III, Public No. 141, 73d Congress, or section 12, Public No. 866, 76th Congress.* Where death occurred under the conditions set forth in section 31, Title III, Public No. 141, 73d Congress, or section 12, Public No. 866, 76th Congress, the rates payable (1) where the veteran served in a war are those authorized in paragraph (1), Veterans' Regulation 1 (g), (38 U. S. C. ch. 12), subject for periods on and after September 1, 1946, to the increases provided by section 2, Public Law 662, 79th Congress, or (2) where the veteran served during peacetime are those authorized in paragraph 2, Veterans' Regulation 1 (g); *Provided,* That for periods on and after September 1, 1948 the rates outlined in §§ 4.122 or 4.124, whichever is applicable, shall be payable. Nothing contained herein shall prevent the payment of a higher rate under a service or other act where authorized.

(b) *Section 2, Public Law 16, 78th Congress (par. 4, Part VII, Veterans' Regulation No. 1 (a) (38 U. S. C. ch. 12)).* Where the death of a veteran of World War II occurred under the conditions set forth in section 2, Public Law 16, 78th Congress (paragraph 4, Part VII, Veterans' Regulation No. 1 (a)), the rates payable are those outlined in § 4.124. (Sec. 31, 48 Stat. 526, sec. 12, 54 Stat. 1197, sec. 2, 57 Stat. 43, 60 Stat. 908 Pub. Law 868, 80th Cong.; 38 U. S. C. 471a–3, 501a–1, 739, ch. 12 note)

Rates of Pension for Death Not the Result of Service

§ 4.130 *Indian wars.*

	Per month	
	Prior to Mar. 1, 1948	On and after Mar. 1, 1948 (act of Jan. 19, 1948)
(a) Widows:		
Act of Mar. 3, 1927	$30.00	$36.00
Act of Mar. 3, 1944	30.00	36.00
70 years of age or over	40.00	48.00
Wife during service	50.00	60.00
Additional for each child	6.00	7.20
(b) Remarried widows:		
Act of Mar. 3, 1927	30.00	36.00
Additional for each child	6.00	7.20
(c) Children:		
Act of Mar. 3, 1927—one child	36.00	43.20
(Additional for each child, equally divided)	6.00	7.20

(44 Stat. 1361, sec. 3, 58 Stat. 109, Pub. Law 398, 80th Cong.; 38 U. S. C. 381, 381a, b, c, d, e)

§ 4.132 *Civil War.*

	Per month	
	Prior to Sept. 1, 1947	On and after Sept. 1, 1947 (act of July 30, 1947)
(a) (1) Widows and remarried widows:		
Act of May 1, 1920	$30.00	$36.00
Act of July 3, 1926 (wife during period of service)	50.00	60.00
Act of June 9, 1930 (over 70 years of age)	40.00	48.00
Additional for each child	6.00	7.20
(2) Widows—Act of Dec. 8, 1944	30.00	36.00
70 years of age or over	40.00	48.00
(b) Children:		
Act of May 1, 1920—one child	36.00	43.20
(Additional for each child, equally divided)	6.00	7.20

(Sec. 4, 41 Stat. 586, sec. 2, 44 Stat. 806, sec. 1, 45 Stat. 714, sec. 3, 46 Stat. 529, sec. 2, Pub. Law 270, 80th Cong.; 38 U. S. C. 288, 291, 291a, b)

§ 4.134 *Spanish-American War, including the Boxer Rebellion and Philippine Insurrection.* (a) Rates under the act of May 1, 1926, as re-enacted by Public No. 269, 74th Congress; sections 1 and 7, Public Law 144, 78th Congress; Public Law 242, 78th Congress; Public Law 611, 79th Congress; Public Law 270, 80th Congress.

(1) *Widows and remarried widows.*

	On and after Apr. 1, 1944	On and after Sept. 1, 1946	On and after Sept. 1, 1947
Under 65 years of age	$30.00	$40.00	$48.00
65 years of age or over	40.00	40.00	48.00
Wife during service	50.00	50.00	60.00
Additional for each child	6.00	6.00	7.20

Where there is a widow or remarried widow, the additional amount for a child is applicable as to each child within the purview of either § 4.2 (b) (i) or § 4.14 (c). (See § 4.12 (c).)

(2) *Children, where there is no widow.* (i) The rates for children who are eligible by reason of the definition of the term "Child" contained in § 4.2 (b) (1) (see § 4.12 (c)), are as follows:

	On and after Aug. 13, 1935	On and after Sept. 1, 1946	On and after Sept. 1, 1947
1 child	$36.00	$46.00	$55.20
Each additional child, total equally divided	6.00	6.00	7.20

The rate for a child or children entitled under this subdivision is not affected by any payments made to a child or children under subdivision (ii) of this subparagraph over the same period of time.

(ii) The rates for children who are eligible solely as a result of the definition of the term "Child" contained in § 4.14 (c) (see § 4.12 (c)), shall be as follows:

	On and after June 1, 1944	On and after Sept. 1, 1946	On and after Sept. 1, 1947
1 child	$18.00	$21.60	$25.92
2 children	27.00	32.40	38.88
3 children	36.00	43.20	51.84
Each additional child	4.00	4.80	5.76
Total amount payable for all children equally divided.			

The rate for a child or children entitled only under this subdivision over any period of time that a child or children are entitled under subparagraph (i) will be the share to which such child or children would be entitled, if all of the children were awarded pension under this subdivision.

(b) *Rates under Veterans' Reg. 1 (a), Part III (38 U. S. C. ch. 12).*

	Per month
Widow but no child	$15.00
Widow and 1 child	20.00
(With $3 monthly for each additional child)	
No widow but 1 child	12.00
No widow but 2 children (equally divided)	15.00
No widow but 3 children (equally divided)	20.00
(With $2 monthly for each additional child, total amount to be equally divided)	

The total pension payable under this subparagraph shall not exceed $27.00 monthly for periods prior to August 8, 1946. No limitation as to the amount payable is applicable on or after that date. (Pub. Law 673, 79th Cong.)

(Sec. 1, 40 Stat. 903, sec. 1, 42 Stat. 834, sec. 2, 44 Stat. 382, sec. 1, 57 Stat. 554, sec. 2, 58 Stat. 803, secs. 2, 4, 60 Stat. 864, 910, 931, sec. 1, Pub. Law 270, 80th Cong.; 38 U. S. C. 355, 356, 364a, 364g–1, 471a–3, 504, 727, 731, ch. 12 note)

§ 4.140 *World War I and World War II.* Rates under Public No. 484, 73d Congress (act of June 28, 1934), as amended; Public Law 312, 78th Congress; sections 1 and 6, Public Law 483, 78th Congress; section 2, Public Law 662, 79th Congress:

	Per month	
	On and after June 1, 1944	On and after Sept. 1, 1946
Widow	$35.00	$42.00
Widow with one child	45.00	54.00
Each additional child	5.00	6.00
Children where there is no widow, total payable equally divided:		
1 child	18.00	21.60
2 children	27.00	32.40
3 children	36.00	43.20
Each additional child	4.00	4.80

The total payable shall not exceed $64.00 for periods prior to December 14, 1944, and $74.00 for periods on or after December 14, 1944 and prior to August 8, 1946 (sec. 2, Pub. Law 483, 78th Cong.) No limitation as to the amount payable is applicable for periods on and after that date. (Pub. Law 673, 79th Cong.) (Secs. 2, 6, 58 Stat. 803, 804, secs. 1, 2, 60 Stat. 910, 931; 38 U. S. C. 471a–3, 504, 731, 735)

CROSS REFERENCE: *Apportionment.* (See § 4.91.)

ACCRUED AMOUNTS DUE AND UNPAID AT DEATH

§ 4.160 *Under section 21, Public Law 144, 78th Congress*—(a) *Basic entitlement.* Except as provided in §§ 4.162 and 4.165, pension, compensation, or retirement pay authorized under laws administered by the Veterans' Administration, to which a person was entitled prior to the date of his death, and not paid during his lifetime, and due and unpaid for a period not to exceed one year prior to death under existing ratings or decisions, or those based on evidence in the file at date of death, shall, upon the death of such person, be paid as hereinafter set forth:

(1) Upon the death of a person receiving an apportioned share of the veterans' pension, compensation, or retirement pay, all or any part of such unpaid amount, to the veteran or to any other dependent or dependents as may be determined by the Administrator of Veterans' Affairs.

(2) Upon the death of a veteran, to the surviving spouse, or if there be no surviving spouse, to the child or children, dependent mother or father, in the order named: *Provided,* That where at the date of death of a veteran an apportioned share is being paid to or has been withheld on behalf of another person, the apportioned amount remaining unpaid for periods prior to the date of the veteran's death shall be payable to the apportionee: *Provided further,* That where it is determined subsequent to the veteran's death that an increased amount is payable pursuant to the provisions of section 12, Public Law 144, 78th Congress, the apportionee shall be entitled to receive his proportionate share in his own right, subject to the limitation that the increased benefit shall not be payable for more than one year prior to the date of the veteran's death: *Provided further,* That the amount payable to or on behalf of an apportionee shall not be subject to any time limitation as to the date of filing of a claim by the apportionee.

(3) Upon the death of a widow or remarried widow, to the veteran's child or children.

(4) Upon the death of a child, to the surviving child or children of the veteran, entitled to death compensation or pension.

(5) In all other cases, only so much of the unpaid pension, compensation, or retirement pay may be paid as may be necessary to reimburse a person who bore the expense of last sickness and burial: *Provided, however,* That no part of any of the accrued pension, compensation, or retirement pay shall be used to reimburse any political subdivision of the United States for expense incurred in the last sickness or burial of such person.

(6) Payment of the benefits authorized by this paragraph will not be made unless claim therefor be received in the Veterans' Administration within one year from the date of death of the beneficiary or one year after July 13, 1943, whichever is later, and such claim is perfected by the submission of the necessary evidence within one year from the date of the request therefor by the Veterans' Administration: *Provided, however,* That a claim for compensation or pension by an apportionee, widow, child, or dependent parent shall be deemed to include claim for any accrued benefits. (Section 12, Public Law 144, 78th Congress.)

(b) *Asset checks.* A check received by a payee in payment of pension, compensation, or retirement pay shall, in the event of the death of the payee on or after the last day of the period covered by such check, become an asset of the estate of the deceased payee. (Sec. 12, Pub. Law 144, 78th Cong.)

(c) *Definitions.* For the purpose of paying accrued benefits under this section, the following definitions are for application:

(1) The term "spouse" shall mean the legal widow or widower of the veteran irrespective of the date of marriage. Continuous cohabitation is not a factor.

(2) The term "child" is as defined in § 4.14 (c) and includes an unmarried child who became helpless prior to attaining 18 years of age as well as an unmarried child over the age of eighteen but not over 21 years of age, who was pursuing a course of instruction within the meaning of § 4.98 (a) at the time of the payee's death, provided only that upon the death of a child in receipt of pension or compensation, any accrued shall be payable to the surviving child or children of the veteran entitled to death pension or compensation.

(3) The term "dependent mother or father" is as defined in § 4.14 (d): *Provided,* That the mother or father is dependent within the meaning of § 3.57 of this chapter at the date of the veteran's death.

(4) The term "evidence in the file at date of death" as used in paragraph (a) of this section will be considered to have been met when there is on file at the date of the veteran's death:

(i) Notwithstanding §§ 3.30 (a) and 4.31 (a) of this chapter, evidence including unsworn statements, which is essentially complete and of such weight as to establish service connection or degree of disability for disease or injury when substantiated by other evidence in file at date of death or when considered in connection with the identifying, verifying or corroborative effect of the death certificate.

(ii) In the case of a veteran whose award is subject to reduction under section 13, Public Law 144, 78th Congress, or section 1, Public Law 662, 79th Congress, by reason of hospital treatment, institutional or domiciliary care by the Veterans' Administration, or by the United States or any political subdivision thereof, prima facie proof of dependents or of other factors affecting entitlement, such as statements on VA Form 8–404, provided satisfactory evidence is furnished in support of the claim for accrued benefits.

(d) *Claims under prior laws.* (1) Where claim for the accrued amount due under the laws in effect on or after March 20, 1933, was not filed prior to July 13 or where claim was filed prior to that date and disallowed either in whole or in part because of prior regulatory restrictions, a claim received prior to July 14, 1944, will be adjudicated under the provisions of this section.

(2) A claim pending on July 13, 1943, will be considered a claim under this section.

(e) *Readjustment allowance and subsistence allowance.* Readjustment allowance and subsistence allowance under the provisions of Public Law 346, 78th Congress, as amended, and subsistence allowance under the provisions of Public Law 16, 78th Congress, as amended by Public Law 268, 79th Congress, remaining due and unpaid at the date of the veteran's death, shall be payable under the provisions of this section: *Provided,* That readjustment allowance shall be payable only under the provisions of paragraphs (a) and (c) of this section. (Sec. 12, 57 Stat. 557, 58 Stat. 284, sec. 7, 59 Stat. 626; 38 U. S. C. 693 note, 729, ch. 12 note)

§ 4.162 *Lump sums payable at death of veteran where award was reduced by reason of hospital treatment, institutional or domiciliary care by the Veterans' Administration.* The provisions of this section shall apply only to the payment of amounts actually withheld on a running award pursuant to the provisions of section (1) (A) (1), Public Law 662, 79th Congress, and to the payment of amounts deposited in funds due incompetent beneficiaries for periods on and after August 8, 1946, which are payable in a lump sum after the veteran's death. Accrued benefits, including any amounts in funds due incompetent beneficiaries for periods prior to August 8, 1946 but excluding such lump sums actually withheld for periods on and after that date, are payable in accordance with the provisions of § 4.160.

(a) *Basic entitlement.* In the event the death of any veteran whose award of disability pension, compensation or retirement pay was reduced pursuant to the provisions of section (1) (A) (1), Public Law 662, 79th Congress, occurs while the veteran is receiving hospital treatment, institutional or domiciliary care, or prior to payment of any lump sum authorized by that section, such lump sum, as well as amounts deposited in funds due incompetent beneficiaries for periods on and after August 8, 1946, shall be paid in the following order of preference:

(1) To the widow or widower.

(2) If the decedent left no widow or widower, or the widow or widower be dead at time of settlement, then to the adult or minor children in equal parts.

(3) If no widow, widower, or child survives at times of settlement, then to the father and mother in equal parts, or all to the survivor.

(4) If no widow, widower, child, father, or mother survives at time of settlement, then to the veteran's brothers and sisters in equal parts.

(5) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness and burial, but no part of the lump sum shall be used to reimburse any political subdivision of

the United States for expenses incurred in the last sickness and burial of the veteran.

(b) *Claim.* No payment shall be made under this section unless claim therefor shall be filed with the Veterans' Administration within 5 years after the death of the veteran: *Provided,* That if any person so entitled be under legal disability at the time of the veteran's death, the 5-year period shall run from the date of termination or removal of the legal disability.

(c) *Lump sum withheld after discharge from institution.* The provisions of paragraphs (a) and (b) of this section shall apply in the event of the death of:

(1) Any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated by him against medical advice or as the result of disciplinary action (sec. (1) (A) (1), Pub. Law 662, 79th Cong.).

(2) Any veteran who was formerly rated incompetent and a lump sum was withheld because a period of 6 months had not expired following a finding of competency (sec. 1 (B), Pub. Law 662, 79th Cong.).

(d) *Asset checks.* The provisions of § 4.160 (b) shall apply in any case in which a check for a lump sum, as described herein, is received by the payee. (Sec. 1 (a), (2), 60 Stat. 908; 38 U. S. C. 739, ch. 12 note)

§ 4.165 *Accrued benefits payable to foreign beneficiaries.* (a) Except as provided in paragraph (b) and (c) of this section, in case of the death of the payee of any check in payment of pension, compensation, or emergency officers retirement pay accruing under laws administered by the Veterans' Administration, while the amount thereof remains in the special deposit account established by Public No. 828, 76th Congress, such amount shall be payable under the provisions of section 3 of this act; *Provided,* That the accrued amount shall be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of any of the offenses mentioned in section 4, Public Law 144, 78th Congress.

(b) In case of the death of any person primarily entitled prior to receiving the full amount of benefits withheld pursuant to the provisions of Public No. 828, 76th Congress, as amended, or not paid because of the provisions of section 5, Public Law 144, 78th Congress, payment shall be made under the provisions of § 4.160 except as to the 1-year limitation on the period covered by the award, if a claim for this amount together with satisfactory evidence that neither the claimant nor the deceased person was guilty of any of the offenses mentioned in section 4, Public Law 144, 78th Congress, shall have been filed prior to August 8, 1947: *Provided,* That a claim filed prior to August 7, 1946, shall be considered a claim under this law. In any case in which payment of the accrued benefit may not be made under the provisions of this paragraph, the provisions of paragraph (a) of this section shall apply (Pub. Law 622, 79th Cong.).

(c) No payments shall be made under § 4.165 to German or Japanese citizens or subjects while residing in Germany or Japan. (Sec. 3, 54 Stat. 1087, secs. 4, 5, 57 Stat. 555; 60 Stat. 874; 31 U. S. C. 125, 38 U. S. C. 728, 729, 729a)

DEATH RATINGS

§ 4.170 *Revision of rating decisions.* (a) The dependents pension boards in branch offices and the central dependents pension board will be governed, generally, by the provisions of § 3.9 (a) (b) (c) and (d) of this chapter in the reversal or amendment of prior rating decisions.

(b) The submissions required by § 3.9 (b) of this chapter will be made to the director, dependents and beneficiaries claims service.

(c) Authority to sever service-connection upon the basis of clear and unmistakable error is vested in agencies of original jurisdiction in central office and branch offices.

(d) Contemplated reversal or amendment of prior rating decisions, which would result in a reduction or discontinuance of a running award of death compensation or pension, will require the same notice to the claimant provided by § 3.9 (d) of this chapter subject to the same exceptions outlined therein. (Sec. 7, 48 Stat. 9; 38 U. S. C. 707)

§ 4.173 *Service-connection in death cases for coronary occlusion or coronary thrombosis.* (a) When the death certificate shows that a veteran died from coronary occlusion or coronary thrombosis within 1 year after termination of active wartime service, whether designated as acute or not and without qualification as to etiology, war service-connection may be granted under Public No. 2, 73d Congress, as amended, for such condition as the terminal manifestation of a chronic disease, coronary arteriosclerosis, subject to the provisions of §§ 3.80 and 3.86 of this chapter, without further development of evidence unless otherwise contraindicated: *Provided, however,* That the medical certification of the death certificate is signed by a physician or is signed by a coroner who is not a physician with a certified transcript of the proceedings of the coroner's inquest (which should be obtained) showing that the finding of coronary occlusion or coronary thrombosis was based on the testimony of a physician; or, in consideration of the transcript, such decision on the question of service-connection, including the further development of evidence if necessary, may be rendered as may be warranted by all facts disclosed.

(b) The rules enunciated in §§ 3.214 (b) (1) and (2) of this chapter are equally applicable in death cases. Accordingly, awards based on the provisions of paragraph (a) of this section will in no event be effective prior to December 31, 1946, the date such criteria were originally issued. (Sec. 4, 48 Stat. 9; 38 U. S. C. 704)

§ 4.176 *World War I; establishment of service-connected disability of less than 10 per centum (Public No. 484, 73d Congress, Act of June 28, 1934, as amended, Public No. 198, 76th Congress, act of July 19, 1939)*—(a) *Basic entitlement.* On and after July 19, 1939, the existence of a directly or presumptively service-connected disease or injury at death and the determination of a disability resulting from such disease or injury for which compensation would be payable if 10 per centum or more in degree may be based upon evidence filed at any time subject to the limitations contained in paragraph II, Part II, Veterans' Regulation No. 2 (a), and paragraph 1, I (a) (3), Veterans' Regulation No. 2 (d). Any disability that may be properly service-connected either directly or presumptively under the provisions of Public No. 2, 73d Congress, as amended, sections 26, 27, and 28 (excluding section 31), Public No. 141, 73d Congress, as amended, or under the law in effect at time of death, based on World War I service as defined in § 3.0 (a) of this chapter, will be considered service-connected for the purpose of Public No. 484, 73d Congress, as amended.

(b) *Definition of term "disability," as used herein.* Subject to establishment of war service-connection as outlined in paragraph (a) of this section, the term "disability" shall comprehend:

(1) Any disease or injury existing at death for which the Schedule of Disability Ratings, 1925, and extensions thereto, prescribes an evaluation of 1 per centum or more disability under any occupational variant.

(2) The following diseases or injuries without necessity of affirmative evidence of existence at death:

(i) Arthritis, traumatic.

(ii) Creative organ, loss of use of, or a disease or injury with resultant orchitis followed by a definitely atrophied testicle as distinguished from an anatomical variation from normal.

(iii) A disease included in §§ 3.86 through 3.88 of this chapter. Not included are the tropical diseases listed in section 1, Public Law 748, 80th Congress, except leprosy.

(iv) Hemorrhoids, even if followed by hemorrhoidectomy, unless adequate examination of the pile-bearing area has clearly shown complete and permanent elimination of the hemorrhoidal condition.

(v) Scars resulting from lacerated wounds, not of combat origin, if service-department records or other evidence shows the character of injury and duration of treatment such as to warrant a conclusion that there was loss of deep fascia or muscle substance. Included are any through and through gunshot wounds.

(vi) Systolic murmur, if organic and not functional.

(vii) Varicose veins, irrespective of effects of excision, litigation, injection of foreign material, or wearing of prosthetic appliances.

(viii) Weak feet, pes planus, claw foot, pes cavus, symptomatic during service.

(ix) A wound or injury incurred in action with an enemy of the United States or as the result of an act of such an enemy, as shown by official records or

other competent evidence: *Provided,* That the wound or injury required medical treatment during service or resulted in a scar or other permanent residual. Included are: Gunshot and other wounds; gas inhalation, gas burns, or gas poisoning; shell shock; injuries received in accidents, explosions, and the like; burns; fractures and dislocations from falls and the like; laceration by barbed wire entanglements; and similar injuries.

(x) A wound or injury incurred in action with an enemy of the United States or as the result of an act of such an enemy, as shown by official records, and there is no record that such wound or injury required medical treatment during service or resulted in a scar or other permanent residual: *Provided,* That a wound chevron or Purple Heart was issued for the condition: *Provided further,* That the indication of treatment established by issuance of the wound chevron or Purple Heart is not rebutted by other evidence.

(3) Any of the following conditions, if shown to exist at death:

(i) Abdominal adhesions, symptomatic.

(ii) Colitis, chronic, symptomatic.

(iii) Cystitis, chronic, symptomatic.

(iv) Eardrum, dry perforation of, without loss of hearing.

(v) Enteritis, chronic, symptomatic.

(vi) Enterocolitis, chronic, symptomatic.

(vii) Eye conditions, chronic, symptomatic.

(viii) Fractured bones, residuals of, slight, symptomatic.

(ix) Hernia, abdominal wall, no truss or belt prescribed as contradistinguished from the existence of an enlarged abdominal ring or the nonsymptomatic residuals of a herniotomy.

(x) Laryngitis, chronic, symptomatic.

(xi) Otitis media, chronic, symptomatic.

(xii) Pharyngitis, chronic, symptomatic.

(xiii) Pleurisy, chronic, symptomatic.

(xiv) Scars, postoperative, incisional, mildly symptomatic, manifesting slight pain and tenderness on objective demonstration or poorly nourished with ulceration.

(xv) Scars of face and neck with slight disfigurement resulting from lacerated wounds not of combat origin.

(xvi) Sinusitis, chronic, symptomatic.

(xvii) Tonsillitis, chronic, symptomatic.

(xviii) Varicocele, symptomatic.

(4) When a compensable evaluation of disability from malaria is not in effect at death or all available evidence is considered insufficient under current criteria to warrant a compensable evaluation at that time, a disability at death may nevertheless be considered as existing for the purposes of Public Law 312, 78th Congress, as amended, in the event there is medical evidence of the existence of malaria within 2 years prior to death and in addition there is acceptable lay evidence of a relapse within the 12-month period preceding death.

(c) *Caution on service-connection.* Paragraph (b) of this section is definitive of disability only and should not in any instance be used or cited as authority for service-connection which must be established in accordance with the laws and regulations governing the period of service involved.

(d) *Cases not covered.* Where there is no provision for evaluation of the disease or injury as a disability and the condition is not a disability within the meaning of paragraph (b) of this section but it is clear that the disease or injury constituted a definitely ascertainable disability, the rating agency or the Board of Veterans Appeals, as the case may be, will outline the evidence and influencing reasons relied on to show the existence of disability: *Provided, however,* That dependents pension boards in branch offices will make recommendatory ratings in such cases which will be forwarded to central office for review and final rating by the central dependents pension board, dependents and beneficiaries claims service. (Sec. 1 (b), 53 Stat. 1069; 38 U. S. C. 503; Public Law 748, 80th Congress)

§ 4.178 *World War II—Establishment of service-connected disability of less than 10 percentum (section 4, Public Law 312, 78th Congress, act of May 27, 1944, as amended, section 6, Public Law 483, 78th Congress, act of December 14, 1944)*—(a) *Basic entitlement.* On and after May 27, 1944, the existence of a service-connected disease or injury at death and the determination of a disability resulting from such disease or injury for which compensation would be payable if 10 per centum or more in degree may be based upon evidence filed at any time subject to the limitations contained in paragraph II, Part II, Veterans' Regulation 2 (a), and paragraph 1, I (a) (3) Veterans' Regulation 2 (d) (38 U. S. C. ch. 12). Any disability that may be properly service-connected under the provisions of Part I, Veterans' Regulation 1 (a), Public No. 2, 73d Congress, as amended, based on World War II service as defined in § 3.0 (b) of this chapter, will be considered service-connected for the purpose of section 4, Public Law 312, 78th Congress, as amended.

(b) *Definition of term "disability."* The term "disability," as used herein, shall comprehend any disease or injury existing at death for which service-connection is established in accordance with laws applicable to World War II based upon service rendered in an enlistment entered into prior to 12 o'clock noon, December 31, 1946, and the disease or injury was incurred prior to midnight July 25, 1947, and which constitutes a disability as defined by the regulations and rating criteria applicable to Public No. 484, 73d Congress, as amended.

(c) *Citation to be made.* This regulation shall be cited as the authority for the determination of the existence of a disability of less than 10 per centum under section 4, Public Law 312, 78th Congress, or Public Law 483, 78th Congress.

(d) *Cases not covered.* Where there is no provision for an evaluation of the disease or injury as a disability and the condition is not a disability within the meaning of the instructions issued defining the term "disability" as used in section 1 (b), Public No. 198, 76th Congress, or section 6, Public Law 483, 78th Congress, but it is clear that the disease or injury constituted a definitely ascertainable disability, the rating agency or the Board of Veterans Appeals, as the case may be, will outline the evidence and influencing reasons relied on to show the existence of a disability: *Provided, however,* That dependents pension boards in branch offices will make recommendatory ratings in such cases which will be forwarded to central office for review and final rating by the central dependents pension board, dependents and beneficiaries claims service. (Secs. 4, 6, 58 Stat. 230, 804; U. S. C. 507b, 735)

§ 4.180 *Rating schedules to be used in evaluation of disability, 10 per centum or more.* (a) In any case where an evaluation of 10 per centum or more is necessary to confer entitlement under Public No. 484, 73d Congress, as amended, or section 4, Public Law 312, 78th Congress, as amended, the degree of disability will be evaluated in accordance with the Schedule of Disability Ratings in effect at the time of death or the Schedule for Rating Disabilities, 1945.

(b) In paragraph (a) of this section, the burden of proof shall be upon the claimant to show that the required degree of disability existed at death subject to the provisions of § 4.182. (Secs. 1, 4, 28, 48 Stat. 9, 524, 1281, sec. 6, 58 Stat. 804, secs. 1, 2, 60 Stat. 319, 320; 38 U. S. C. 503, 704, 722, 735, 736, 737)

§ 4.182 *Interpretation of "at time of death was receiving or entitled to receive compensation or retirement pay" for purpose of Public No. 484, 73d Congress (act of June 28, 1934), as amended, or section 4, Public Law 312, 78th Congress (act of May 27, 1944), as amended.* (a) In the case of any deceased person who served in World War I or World War II, an evaluation of 10 per centum or more disability in effect at death established by a proper rating agency based on service-connected disease or injury, as defined in §§ 4.176 (a) and 4.178 (a), will be accepted as showing that such person was receiving or entitled to receive compensation or retirement pay, regardless of the particular Rating Schedule under which evaluated, except for fraud or where there was no legal basis for an award, as distinguished from errors such as those involving judgment, medical opinion, or diagnosis.

(b) In cases coming within the protective provisions of paragraph (a) of this section, the rating agency will prepare the rating in accordance with the correct facts and proper application of the law reflecting therein reduced evaluation or severance of service-connection under § 4.170, as may be warranted, but followed by the legend "veteran was receiving or entitled to receive compensation or retirement pay for war service-connected disability at time of death within the meaning of § 4.182 (a)." (Sec. 1, 48 Stat. 1281, secs. 1, 6, 58 Stat. 803, 804; 38 U. S. C. 503, 735)

§ 4.184 *Disabilities not included under §§ 4.176, 4.178, 4.180 or 4.182.* There may not be considered in determining entitlement under Public No. 484, 73d Congress, as amended, or section 4, Public Law 312, 78th Congress, as amended:

(a) Disabilities incurred or aggravated as the result of training, hospitalization, or medical or surgical treatment under section 31, Public No. 141, 73d Congress, the result of examinations under section 12, Public No. 866, 76th Congress, or the result of training under paragraph 4, Part VII, Veterans' Regulation 1 (a) (38 U. S. C. ch. 12), as amended (Public Law 16, 78th Congress, as amended).

(b) (Disabilities incurred or aggravated in service in the organized military forces of the Commonwealth of the Philippines under title II, Public Law 301, 79th Congress. (Sec. 1, 48 Stat. 1281, secs. 1, 6, 58 Stat. 803, 804; 38 U. S. C. 503, 735)

BURIAL AND FUNERAL EXPENSES AND TRANSPORTATION OF BODIES OF VETERANS

§ 4.192 *Payment of burial expenses of deceased war veterans and veterans of the regular establishment*—(a) *Death prior to March 20, 1933.* Where a veteran of any war who was not dishonorably discharged died prior to March 20, 1933, under conditions which warrant the payment of, or reimbursement for, burial, funeral and transportation expenses, payment or reimbursement may be made in accordance with the laws in effect prior to March 20, 1933, if claim therefor was filed within three months from June 16, 1933, the date of enactment of Public No. 78, 73d Congress.

(b) *Death on or after March 20, 1933.* When a veteran of any war as defined in § 4.194 dies or is buried on or after March 20, 1933, an amount not to exceed $100 ($150 as to claims adjudicated on or after July 24, 1946, the date of approval of Public Law 529, 79th Congress) may be allowed for burial and funeral expenses and transportation of the body (including preparation of the body) to the place of burial, if otherwise entitled under the provisions of §§ 4.192 to 4.207.

(c) *Death on or after October 5, 1940.* When a veteran discharged from the Army, Navy, Marine Corps, or Coast Guard for disability incurred in line of duty, or a veteran of the Army, Navy, Marine Corps, or Coast Guard in receipt of pension for service-connected disability dies after discharge and on or subsequent to October 5, 1940, a sum not exceeding $100 ($150 as to claims adjudicated on or after July 24, 1946) may be allowed for burial and funeral expenses and transportation of the body to the place of burial.

(d) *Limitation as to time for filing and perfecting claim.* (1) All claims for reimbursement or direct payment of burial and funeral expenses and transportation of the body must be filed within two years subsequent to the date of permanent burial or cremation of the veteran by the person entitled or by some person acting for him; e. g., burial or cremation on December 1, 1944, claim filed December 1, 1946, is timely filed. In the event the claimant's application is not complete at the time of original submission, the claimant and the person acting for him, if any, will be notified of the evidence necessary to complete the application and if such evidence is not received within one year from the date of the request therefor no allowance may be paid: *Provided,* That if within the two-year period from date of permanent burial or cremation, the claim is disallowed because the evidence to complete it was not received within one year from request therefor, and a new claim (formal or informal) is filed within such two-year period, the claimant will be notified of the evidence necessary to complete the claim and if such evidence is received within one year from the date of request therefor the allowance may be paid if the claimant is otherwise entitled.

(2) Where the death or burial of a veteran occurred on or after March 20, 1933, and claim for burial allowance was not filed, or was filed after the expiration of the regulatory period, or was filed within the regulatory period and disallowed because the evidence necessary to complete the claim was not timely filed, or was filed within the regulatory period and disallowed in whole or in part because of a payment made by a lodge, union, fraternal organization, society, beneficial organization, insurance company, or because of a cash contribution made by a burial association to any person other than the person rendering burial and funeral services, a claim, formal or informal, filed within two years after October 17, 1940, or on or before October 17, 1942, shall be adjudicated under the provisions of §§ 4.192 to 4.207 inclusive: *Provided,*

(3) Where a claim for the statutory burial allowance, based on the death of a veteran on or after March 20, 1933, has been denied for any of the reasons outlined in subparagraph (2) of this paragraph, and such claim was otherwise payable under then existing law and regulations, such claim may be reconsidered under present existing law and regulations upon receipt, on or before October 17, 1942, of written request therefor from the claimant or his representative (Public, No. 866, 76th Congress, act of October 17, 1940). (Secs. 17, 20, 48 Stat. 11, 309, sec. 2 (a), 54 Stat. 1193, 60 Stat. 654; 38 U. S. C. 718, 722, ch. 12 note)

§ 4.194 *"Veteran of any war"; definition of*—(a) *Persons included.* The term "veteran of any war" for the purpose of adjudicating claims for direct payment of, or reimbursement for burial, funeral and transportation expenses incurred in behalf of deceased veterans where death was on or subsequent to March 20, 1933, will include:

(1) Civil War, any member of the active military or naval service of the United States, discharged under conditions other than dishonorable, who served during the Civil War subsequent to April 11, 1861, and prior to May 27, 1865, including those persons who served as members of State organizations participating in the Civil War for whose services the State has been reimbursed by the United States Government. Nothing herein shall be construed to exclude from the definition any person who was receiving pension as a Civil War veteran under the Civil War service pension laws or who was not entitled to pension under such Civil War pension service laws solely because of length of service or as to whom any Special Act of Congress has been enacted which provides that such person shall be considered as having rendered military service during the Civil War. Civil War nurses are included in this definition if in receipt of pension for Civil War service;

(2) Indian wars, any veteran of any Indian war, as formerly contemplated by the provisions of section 201 (1) of the World War Veterans' Act, 1924, as amended, and regulations, precedents, and instructions issued pursuant thereto, or a person who at time of his death was receiving a pension in accordance with the provisions of the laws governing the payment of a pension as a veteran of an Indian war. Pension conferred by a Special Act does not in itself confer right to the burial allowance unless such act specifically provides that the person shall be considered as having rendered military service during the Indian wars;

(3) Spanish American War (includes Philippine Insurrection and Boxer Rebellion), any officer or enlisted man who was employed in the active military or naval service of the United States on or after April 21, 1898, and before July 5, 1902, who was discharged under conditions other than dishonorable, including those women who served as Army nurses under contract or who served in the Nurse Corps (female), and also including contract surgeons of the Army who served overseas during this period: *Provided, however,* That if the person was serving with the United States military forces engaged in the hostilities in the Moro Province, Philippine Islands, the ending date will be extended to include July 15, 1903;

(4) World War I, any officer, enlisted man, member of the Army Nurse Corps (female), Navy Nurse Corps (female), discharged under conditions other than dishonorable, who was employed in the active military or naval service of the United States on or after April 6, 1917, and before November 12, 1918: *Provided, however,* That if the person was serving with the United States military forces in Russia the ending date will be extended through April 1, 1920 (the provisions of section 5, Public No. 304, 75th Congress, are not applicable to burial claims);

(5) World War II, any person discharged or released from active duty under conditions other than dishonorable, who served in the active military or naval service of the United States on or after December 7, 1941, and before the termination of hostilities in World War II, twelve o'clock noon, December 31, 1946: *Provided,* That the term "active military or naval service" as used herein shall include active duty as a member of the Women's Auxiliary Corps, Women's Army Corps (WAAC and WAC), Women's Reserve of the Navy and Marine Corps, and the Women's Reserve of the Coast Guard.

(6) Any enlisted man or officer of the Army, Navy, Marine Corps, or Coast Guard in retirement status at the date of death if shown to have served during the period of any war. Where death occurs on or after March 28, 1934 (except

as provided in paragraph (b) of this section) and the other requirements of this section have been met, the character of discharge will not bar payment of the burial allowance if the veteran was in receipt of pension, compensation, or emergency officers' retirement pay at the time of his death. (38 U. S. C. ch. 12 Reg. 9 (c))

(b) *Dishonorable conditions.* (1) A person discharged or dismissed by reason of the sentence of a general court martial, or discharged on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority, or as a deserter, or in the case of an officer where his resignation is accepted for the good of the service, shall be barred from entitlement to the burial allowance based upon the period of service from which so discharged or dismissed.

(2) The requirement of the words "dishonorable conditions" will be deemed to have been met when it is shown that the discharge or separation from active military or naval service was (i) for mutiny, (ii) spying, or (iii) for an offense involving moral turpitude of wilful and persistent misconduct: *Provided, however,* That where service was otherwise honest, faithful, and meritorious, a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditons and under such circumstances the burial allowance will, if all other conditions are present, be allowable.

(c) *Persons not included.* Except as provided in § 4.196 (c), a discharged or rejected draftee or selectee; a member of the National Guard who reported to camp in answer to the President's call for World War service, but who, when medically examined, was not finally accepted for active military service; or an alien who does not come within the purview of § 3.1 (j) of this chapter is not a "veteran of any war" within the meaning of that term as defined in paragraph (a) of this section, even though such person may have been in receipt of compensation or pension. (38 U. S. C., ch. 12, Reg. 9 (c)) (Secs. 14, 17, 30, 48 Stat. 8, 9, 11, 525, sec. 9 (a) 57 Stat. 556, sec. 1503, 58 Stat. 301, 60 Stat. 654; 38 U. S. C. 366, 367, 697c, 701, 704, 718, ch. 12 note)

§ 4.195 *"Veteran" (other than "veteran of any war"); definition of*—(a) *Persons included.* The term "veteran" (other than a "veteran of any war") for the purpose of adjudicating claims for the direct payment of, or reimbursement for, burial, funeral, and transportation expenses incurred in behalf of deceased veterans where death occurred on or subsequent to October 5, 1940, will include: (1) A veteran discharged or retired from the Army, Navy, Marine Corps, or Coast Guard for disability incurred in, or aggravated by, service in line of duty, or (2) a veteran of the Army, Navy, Marine Corps, or Coast Guard in receipt of pension for service-connected disability.

(b) *Discharge for disability incurred in line of duty.* For veterans discharged or retired from the Army, Navy, Marine Corps, or Coast Guard for disability, who are not in receipt of pension for service-connected disability, the official records of the Service Department showing that the disability on account of which the veteran was discharged or separated from his service was incurred in line of duty will be accepted for the purpose of determining eligibility to the burial allowance, notwithstanding the fact that the Veterans' Administration has made a determination in connection with a claim for monetary benefits that the disability was incurred not in line of duty.

(c) *Exceptional cases.* In those exceptional cases where the official records of the Service Department show discharge because of expiration of period of enlistment or any other reason save disability but also show a disability incurred in line of duty during the said enlistment and on account of which the veteran was under treatment at the time of discharge, or where not under treatment therefor at time of discharge, said disability is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge for disability incurred in line of duty had the period of enlistment not expired or other reason for discharge been given; the adjudicating agency, upon consideration of the facts of record, is authorized to determine whether such facts were sufficient to have warranted a discharge for disability incurred in line of duty, and if determined to have been so warranted, the burial allowance may be authorized, provided entitlement is otherwise established.

(d) *Controverting evidence.* Where claim for the burial allowance would be or has been disallowed on the basis of the official records of the Service Department showing that the disability was not incurred in line of duty and evidence is submitted to the Veterans' Administration which permits of a different finding, the decision of the Service Department will not be binding upon the Veterans' Administration which will be free to make its own determination of line of duty incurrence upon the evidence so submitted: *Provided,* That the burden of proof will rest upon the claimant. Such controverting evidence will be considered by those employees authorized to make finding of fact and law in burial claims except that in any case under this paragraph or paragraph (c) of this section where a medical question is involved, the case will be referred to a rating agency of original jurisdiction for determination as to whether the disability for which the veteran was discharged was incurred in line of duty or for determination as to whether the facts of record would, in those cases where discharge was for other reasons, save disability, have warranted a discharge for disability incurred in line of duty. (Secs. 1, 4, 48 Stat. 8, 9, 54 Stat. 963; 38 U. S. C. 701, 704, ch. 12 note)

§ 4.196 *Death occurring while traveling under prior authorization or while properly hospitalized by the Veterans' Administration.* (a) When a person while traveling under proper prior authorization and at the expense of the Veterans' Administration, either to or from a specified destination, for the purpose of examination, treatment, or care, dies en route, burial, funeral, and transportation expenses will be provided in all respects as though death occurred while properly hospitalized by the Veterans' Administration.

(b) When death occurs within the continental limits of the United States, on or after March 20, 1933, in a Veterans' Administration center, hospital, or other institution to which properly admitted for hospital or domiciliary care under authority of the Veterans' Administration, will be paid the actual cost, not to exceed $100 ($150 as to claims adjudicated on or after July 24, 1946), of burial and funeral, and the body will be transported to the place of burial within the continental limits of the United States or to the place of burial in Alaska if the veteran was a resident of Alaska and had been brought to the United States as a beneficiary of the Veterans' Administration for hospital or domiciliary care. Where death occurs while hospitalized under authority of the Veterans' Administration in a territory or possession of the United States, there will be paid, not to exceed $100 ($150 as to claims adjudicated on or after July 24, 1946), the actual cost of burial and funeral, and the body will be transported to the place of burial within such territory or possession (Public No. 866 76th Congress). If death occurs within the continental limits of the United States in an institution to which properly admitted under authority of the Veterans' Administration for hospital or domiciliary care and burial is to be made without the continental limits of the United States (except Alaska as set forth in the first sentence of this paragraph), transportation will be allowed to the port of embarkation or to the border limits of the United States where burial is in Canada or Mexico. The provisions of this paragraph will also apply in the adjudication of any claim pending on October 17, 1940, and in any claim which is reopened under the provisions of § 4.192 (d) (2) and (3).

(c) Reimbursement shall be allowed for burial, funeral, and transportation expenses in the case of a discharged or rejected draftee; a member of the National Guard who reported to camp in answer to the President's call for World War I service, but who, when medically examined, was not finally accepted for active military service; who dies in an institution to which properly admitted for hospital or domiciliary care under authority of the Veterans' Administration. (See § 4.194 (c).)

(1) Reimbursement shall be allowed for burial, funeral, and transportation expenses in the case of a veteran discharged under conditions other than dishonorable from a period of service other than war service who dies in an institution to which properly admitted under authority of the Veterans' Administration for hospital or domiciliary care in the same manner as a veteran of a war.

(2) Where death of a person occurs in a Veterans' Administration center or hospital and it is determined that such person was not properly entitled to hospital treatment, no reimbursement of burial, funeral, and transportation expenses will be allowed. (See 38 U. S. C. ch. 12, Reg. 6 (c) and Veterans' Administration supply procedure concerning disposition of bodies of persons not entitled to statutory burial allowance.)

(d) A veteran member or patient of a Veterans' Administration center, hospital, or other institution to which properly admitted under authority of the Veterans' Administration for hospital or domiciliary care, who dies away from such center, hospital, or other institution from which he has been granted a pass (a "pass" does not exceed 72 hours) or who has been absent without leave from such center, hospital, or other institution for not to exceed 24 hours, may be considered to have died in the center, hospital, or other institution. (Sec. 17, 48 Stat. 11, sec. 2, 54 Stat. 1193; 38 U. S. C. 718, ch. 12 note)

§ 4.198 *Evidence required in case of unclaimed bodies.* If the body of a deceased veteran is unclaimed, there being located no relatives or friends of the deceased veteran who will claim the body, the amount provided for the burial allowance will be available for burial of the deceased upon the submission of a properly completed Application for Burial Allowance, VA Form 8–530, accompanied by a comprehensive statement made by the manager or other official acting in his stead covering all relevant facts in the case and showing specifically to what extent efforts were made to locate relatives or friends. The burial allowance will not be awarded, however, in any instance where an award would result in an escheat of any part of the estate.

§ 4.199 *Assets.* Where death occurred on or after March 20, 1933, and before June 29, 1936 (effective date of Pub. No. 844, 74th Cong.), the burial allowance unless payable under the provisions of § 4.196, shall not be allowed if the veteran's net assets at the time of death, exclusive of debts and accrued pension, compensation, or insurance due at time of death, equal or exceed the sum of $1,000. (Sec. 17, 48 Stat. 11, sec. 401, 49 Stat. 2034; 38 U. S. C. 34, 718)

§ 4.200 *Filing of claim for unauthorized burial, funeral, and transportation expenses*—(a) *Execution of claim.* Claims for burial, funeral, and transportation expenses must be submitted on VA Form 8–530, Application for Burial Allowance, and should be executed by:

(1) The undertaker where bill is unpaid. (See § 4.212.)

(2) The individual who used personal funds to pay burial, funeral, and transportation expenses.

(3) The executor or administrator of the estate of the veteran or of the estate of the person who paid the expense of the veteran's burial. If no administrator or executor is appointed, then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

In addition to the VA Form 8–530, claims for burial, funeral, and transportation expenses should be supported by a statement of account (preferably on the billhead of the undertaker), showing the cost of the service rendered and the name of the deceased veteran. Receipt must be furnished to cover charges for cremation, grave digging, grave space, firing squads, and for items not ordinarily carried in an undertaker's stock, or for services performed by persons other than the undertaker or his regular employees where these items and services are listed on an unpaid bill supporting a claim for the burial allowance and the other allowable items or services are not sufficient to cover the amount to be awarded. All statements of account, where paid, must show by whom payment was made and be receipted in the name of the undertaking firm or individual owner, who received payment.

(b) *Proof of death.* Proof of the fact of death shall be established in accordance with the provisions of § 3.55 of this chapter.

(c) *Waiver by distributees.* In any instance where the burial, funeral, and transportation expenses of a deceased veteran have been paid from the funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, the amount of the statutory burial allowance payable to heirs may be awarded to one heir upon the unconditional written consent of all other heirs. No payment will be authorized where there are no heirs and the money, if paid, would escheat. (Sec. 17, 48 Stat. 11, sec. 2 (a), 54 Stat. 1193; 38 U. S. C. 718, ch. 12 note)

§ 4.202 *Nonallowable expenses of burial, funeral, and transportation*—(a) *Accessory items.* Cost of State tax and items of food and drink (domestic or foreign cases) will not be allowed.

(b) *Duplicate items.* Payment may not be made for duplicate items of service such as casket, clothing, etc., previously furnished by any Federal agency.

§ 4.203 *Transportation; death while properly hospitalized by Veterans' Administration or while traveling under prior authorization*—(a) *Items allowable as part of transportation where shipment is by common carrier.* In adjudicating claims where death of a person occurs in an institution to which properly admitted under authorization of the Veterans' Administration for hospital or domiciliary care or while traveling under prior authorization of the Veterans' Administration either to or from a specified destination as contemplated by § 4.196 (a) and the remains are shipped by common carrier, the following items will be considered as part of transportation expense, the cost of which will be allowed in addition to the statutory allowance.

(1) Original pick-up of remains at facility or place where death occurred while traveling under prior authorization (§ 4.196 (a)). A reasonable amount will be allowed for this "pick-up" but it will not exceed the usual and customary charge made to the general public for the same service.

(2) Procuring permit for shipment.

(3) Outside shipment. (If the box purchased for interment purposes was also used for a shipping box, an allowance of $25.00 may be made on the cost of the box as a part of transportation expense, in addition to the statutory allowance of $100.00 or $150.00 as provided in § 4.196, and any balance on such box may be included in the burial allowance of $100.00 or $150.00, whichever is applicable.)

(4) Sealing outside case (tin or galvanized iron). (Where a vault, steel or concrete, is used as a shipping case and also for burial, an allowance of $25.00 may be made on the cost of the vault as a part of transportation expense, in addition to the statutory burial allowance of $100 or $150 as provided in § 4.196, and any balance on such vault may be included in the burial allowance of $100 or $150, whichever is applicable.)

(5) Hearse to common carrier.

(6) Transportation by common carrier.

(7) One removal by hearse direct from common carrier plus one subsequent removal by hearse to place of burial.

(b) *Items allowable as part of transportation where remains are transported overland by hearse.* In adjudicating claims where death of a person occurs in a Veterans' Administration hospital, or domiciliary activity of a center, or other institution to which properly admitted under authority of the Veterans' Administration for hospital or domiciliary care, or while traveling under prior authorization of the Veterans' Administration, either to or from a specified destination as contemplated by § 4.196 (a), and the remains are transported overland by hearse, the following items will be considered as a part of transportation expense, the cost of which will be allowed in addition to the statutory allowance:

(1) (i) Original pick-up of remains from the Veterans' Administration hospital, domiciliary activity of a center, or other institution to which properly admitted under authority of the Veterans' Administration for hospital or domiciliary care or place where death occurred while traveling under prior authorization (§ 4.196 (a)) prior to transfer to place of burial, and

(ii) Reasonable cost of subsequent removal from the place to which transported on original pick-up under subdivision (i) of this subparagraph, to place of burial. The reasonableness of transportation charges against the Veterans' Administration accomplished by means other than by common carrier will be determined by employees authorized to make findings of fact and law in burial claims, but the amount to be allowed shall not exceed the charge made the general public for the same service. (Sec. 2 (a), 54 Stat. 1193, sec. 102, 58 Stat. 284; 38 U. S. C. 693b, ch. 12 note)

§ 4.204 *Payments on burial by lodge, union, burial association, State, county, political subdivision, or Federal agency.* (a) Nothing in §§ 4.192 to 4.207 inclusive, shall be construed to cause the dis-

allowance of a claim by the Veterans' Administration because of any payment made on burial and funeral (including transportation) by a State, county, or other political subdivision, Workmen's Compensation Commission, State Industrial Accident Board, employer, burial association or Federal agency, unless the amount of expenses incurred is absorbed by the amount actually paid for burial and funeral (including transportation) purposes by such agencies: *Provided,* That no claim shall be allowed for more than the difference between the entire amount of expenses incurred, and the amount paid by any or all of the foregoing agencies: *Provided further,* That in no instance shall the amount allowed exceed $100 ($150 as to claims adjudicated on or after July 24, 1946, the date of approval of Pub. Law 529, 79th Cong.). Nothing herein shall be construed to cause the denial of, or a reduction in, the amount of burial allowance otherwise payable because of a cash contribution made by a burial association to any person other than the person rendering burial and funeral services.

(1) Contributions by lodge, union, fraternal organization, society or beneficial organization, insurance company: Any contributions made by lodge, union, fraternal organization, society or beneficial organization or insurance company by reason of the death of a veteran will not constitute a bar to the payment of the statutory burial allowance, except where such funds would revert to the funds of the lodge, union, fraternal organization, beneficial association or organization.

(b) In no event shall the burial allowance be paid when the veteran died while in the active service of the Army, Marine Corps, Coast Guard or Navy, except that with regard to the Navy this proviso is not effective in cases of veterans having previously been discharged or retired from service as defined in §§ 4.194 and 4.195 where burial services were rendered prior to July 1, 1941; or while on active duty with the National Guard as authorized by section 38, National Defense Act, or while a member of the National Guard when en route to or from or during attendance at encampment, maneuvers, or other exercises or at service schools authorized by sections 94, 97, and 99 of the National Defense Act or while on active duty with the Organized Reserves, Reserve Officers Training Camp, Citizens Military Training Camp or similar organizations, or while enrolled in the Civilian Conservation Corps, or while in employment covered by the United States Employees Compensation Act, or other similar laws providing for the payment of expenses of funeral, transportation and interment out of funds appropriated by the Federal Government. Claims for statutory burial allowance shall not be denied solely because of a provision in any Federal law or regulation permitting the application of funds due or accrued to the credit of the deceased toward the expenses of funeral, transportation and interment as distinguished from a provision specifically prescribing a definite allowance for such purpose. (Sec. 2 (a), 54 Stat. 1193; 38 U. S. C. ch. 12 note)

§ 4.205 *Cost of services furnished by the Veterans' Administration to be deducted, reimbursement for cost of flags; forfeiture.* (a) In the adjudication of claims filed under § 4.196 the cost of services (burial and funeral) furnished by the Veterans' Administration will be deducted from the burial allowance.

(b) Subsequent to April 14, 1933, no reimbursement may be allowed for burial flags privately purchased by relatives, friends, or other parties (38 U. S. C. ch. 12, Reg. 9 (c)).

(c) Forfeiture of benefits by a veteran under the provisions of section 504, World War Veterans' Act, as amended, or section 15 of Public No. 2, 73d Congress, shall not preclude payment of the statutory burial allowance where the death of the veteran occurred on or subsequent to October 17, 1940. (Sec. 9, Pub. No. 866, 76th Congress.) (Sec. 2 (a), 54 Stat. 1193; 38 U. S. C. ch. 12 note)

§ 4.206 *Burial in national cemeteries; allowances provided.* The allowances provided in § § 4.192, 4.196 and 4.198 will apply to the burial of the veterans mentioned therein, in a National Cemetery under the provisions of section 4878 of the Revised Statutes of the United States, when the following conditions have been met

(a) Such burial is desired by the person or persons entitled to the custody of the body for purposes of interment.

(1) In case the body is unclaimed by relatives or friends and there are no known assets, the official named in paragraph (c) of this section when notified, will immediately complete arrangements for burial in a National Cemetery.

(b) Permission for such burial has been received from the proper officers having jurisdiction over burials in National Cemeteries.

(c) Approval is obtained from and all arrangements are made with the manager of the region in which the death occurred. (Sec. 17, 48 Stat. 11; 38 U. S. C. 718)

§ 4.207 *Official representation at funeral.* When requested by the person entitled to the custody of the body of a deceased beneficiary of the Veterans' Administration, official representation at the funeral will be granted provided an employee is available for this purpose and that this representation will entail no expense to the Veterans' Administration. (Sec. 17, 48 Stat. 11; 38 U. S. C. 718)

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

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AUTHORITY: §§ 6.0 to 6.205 issued under secs. 5, 300, 301, 43 Stat. 608, 624, secs. 1, 2, 46 Stat. 1016; 38 U. S. C. 11, 11a, 426, 511, 512, 707. Statutes giving special authority are cited in parentheses at the end of affected sections.

APPLICATIONS

§ 6.0 *Under section 300, World War Veterans' Act, 1924, as amended.* Persons entering the active military or naval service under the War Department, Navy Department, or Coast Guard service may apply for the United States Government life insurance provided for by section 300 of the World War Veterans' Act, 1924, as amended, within 120 days after enlistment, entrance into, or employment in the active service and before discharge or resignation. The amount of insurance granted to one person may not be more than $10,000 or less than $1,000 in multiples of $500. Applications for such insurance should be made on forms prescribed by the Veterans' Administration, but any statement in writing sufficient to identify the applicant, and the amount and plan of insurance, and a remittance to cover the first monthly premium thereon, will be acceptable as an application for insurance.

§ 6.1 *Under section 310, World War Veterans' Act, 1924, as amended.* Veterans of the World War who applied or were eligible to apply for yearly renewable term (wartime) insurance or United States Government life (converted) insurance may apply for United States Government life insurance as authorized by section 310 of the World War Veterans' Act, 1924, as amended May 29, 1928, in amounts not to exceed $10,000 nor less than $1,000 in multiples of $500: *Provided,* That the amount of insurance granted under section 310, plus any amount in force under premium paying conditions, or in force as extended insurance, plus any amount carried under a previous policy and surrendered for cash, or surrendered for paid-up insurance, shall not exceed $10,000. Applications for such insurance should be made on forms prescribed by the Veterans' Administration but a statement in writing sufficient to identify the applicant and the amount and plan of insurance, to-

gether with a report of physical examination and a remittance sufficient to cover the first monthly premium thereon, will be considered an application for insurance. (Sec. 15, 45 Stat. 970; 38 U. S. C. 512a)

EFFECTIVE DATE

§ 6.5 *Insurance applied for by person entering active military or naval service.* The effective date of United States Government life insurance applied for by persons entering the active military or naval service under the War Department, Navy Department, or Coast Guard service will be established as of the date on which valid application and tender of premium are made and forwarded to the Veterans' Administration; but not later than 120 days from the date of the applicant's enlistment, entrance into, or employment in the active service and while on active duty. If the first premium is to be paid by allotment of pay as in the Navy, Marine Corps, and Coast Guard, or by deduction from pay, as in the Army, the effective date of the insurance will be the first day of the month following the month in which said allotment or authorization for deduction is executed, but not later than the first day of the month following the expiration of the period of 120 days from date of the applicant's enlistment, entrance into or employment in the active service and while on active duty: *Provided,* The amount of premium is deducted from the applicant's service pay in accordance with the allotment or authorization.

(a) The effective date of a United States Government life insurance policy granted to a person entering the active military or naval service under the War Department, Navy Department, or Coast Guard service may be established upon written request by the applicant as of any day of a month prior to the month in which the application and tender of premiums are made to the Veterans' Administration, as set out above: *Provided,* That such date is not prior to the date of entrance into the active service, and that there be paid (1) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which the application is made, and (2) the full premium on the amount and plan of insurance for the month in which application is made.

§ 6.6 *Insurance applied for under section 310, World War Veterans' Act, 1924, as amended.* The effective date of United States Government life insurance applied for under section 310 of the World War Veterans' Act, 1924, as amended May 29, 1928, by veterans of the World War who applied or were eligible to apply for yearly renewable term (wartime) insurance or United States Government life (converted) insurance will be established as of the first day of the month in which application for insurance is made to the Veterans' Administration, unless the applicant expressly makes written request at the time of applying to have the insurance become effective as of the first day of the month following the month in which application for insurance is made. However, upon the request of the applicant, the United States Government life insurance policy may be issued effective as of the first day of any month prior to the month in which application is made: *Provided,* That such date is not more than six months prior to the first day of the month in which application is made or prior to May 29, 1928: *Provided further,* That there be paid (a) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (b) the full premium for the month in which the application is made.

AGE

§ 6.12 *Misstatement of age.* If the age of the insured under a United States Government life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Veterans' Administration at any time upon satisfactory proof.

PREMIUMS

§ 6.13 *Premium rate.* United States Government life insurance is granted at the premium rate for the age nearest birthday anniversary of the applicant at the time the policy becomes effective in accordance with the premium rates published in Veterans' Administration Form 740 entitled "Premium Rates and Policy Values on U. S. Government Life Insurance."

§ 6.14 *Premiums on United States Government life insurance.* United States Government life insurance is granted in consideration of and subject to the terms and conditions set forth in the policy and further consideration of the payment of the monthly premium due and payable on the day the policy takes effect and on the same day of each succeeding month during the lifetime of the insured or for the period for which premiums are due and payable as provided by the terms and conditions of the policy contract.

§ 6.15 *Due date of premiums.* Premiums on United States Government life insurance are due and payable monthly in advance in legal tender of the United States of America to the Treasurer of the United States in the city of Washington, District of Columbia. Premiums may be paid annually, semi-annually, or quarterly in advance, in which case the premium payable will be the sum of the monthly premiums for the period discounted at 3½ percent per annum. The discounted premiums for these periods are stated on the first page of the policy. At maturity by death or otherwise, the discounted value at 3½ percent per annum of the premiums paid in advance beyond the current calendar month shall be refunded to the insured, if living; otherwise to the beneficiary. If any premium be not paid when due, the policy shall cease and become void except as otherwise provided.

§ 6.16 *Payment of premiums, insured in the active military, naval, or Coast Guard service.* Premiums on United States Government life insurance may be paid by persons in the active military, naval, or Coast Guard service (a) by direct remittance to the Veterans' Administration, or (b) by allotment of service pay.

§ 6.17 *Payment of insurance premiums by mail.* When it appears by proof satisfactory to the Administrator of Veterans' Affairs that the person to whom insurance has been granted under the War Risk Insurance Act or the World War Veterans' Act, 1924, as amended, or any person authorized to act on his behalf, has deposited in the mail within the grace period allowed by regulation for payment of a premium an envelope, properly addressed to the Veterans' Administration, Washington, D. C., or to a regional office of the Veterans' Administration, containing money, check, draft, or money order, in payment of a premium, such insurance will not lapse for nonpayment of such premium within the grace period: *Provided,* That if tender is by check or draft, such check or draft is honored on presentation for payment.

§ 6.20 *Deduction of insurance premiums from disability compensation, retirement pay, or pension.* The insured under a United States Government life insurance policy; or under yearly renewable term insurance, may authorize the monthly deduction of premiums from disability compensation, retirement pay, or pension that may be due and payable to him under any laws administered by the Veterans' Administration, in accordance with the following provisions:

(a) The authorization must be in writing over the signature of the insured, and whenever practicable on such forms as may be prescribed by the Veterans' Administration.

(b) The monthly disability compensation, retirement pay, or pension so due and payable must be equal to, or in excess of, the amount of the insurance premium figured on a monthly basis.

(c) The authorization will be effective on the first day of the month next following the month in which it is received by the Veterans' Administration, unless the insured elects to have the authorization become effective on the first day of a succeeding month.

(d) The authorization may be canceled by the insured at any time by notice in writing to the Veterans' Administration. Such cancellation will be effective on the first day of the month following the month in which it is received by the Veterans' Administration.

(e) If the benefits payable to the insured are apportioned under the regulations of the Veterans' Administration now in effect or hereafter issued, the deduction authorized by the insured shall be from that portion awarded to the insured under such regulations.

§ 6.21 *Effective date of authorization for deduction of insurance premiums from disability compensation, retirement pay, or pension.* When premium deductions are authorized by the insured under United States Government life insurance

or under yearly renewable term insurance, in accordance with the provisions of Veterans' Administration regulations, the Veterans' Administration will make monthly deductions from the disability compensation, retirement pay, or pension, due and payable to the insured, of an amount sufficient to pay the monthly premium on the insurance. Such deductions shall begin with the month in which the authorization is effective and continue so long as the disability compensation, retirement pay, or pension due and payable to the insured is sufficient to pay the monthly insurance premium, unless the authorization is sooner canceled or otherwise terminated.

§ 6.22 *Premiums to be deducted from disability compensation, retirement pay, or pension, treated as paid, for purpose of preventing lapse.* When premium deductions are authorized by the insured under United States Government life insurance or under yearly renewable term insurance, in accordance with the provisions of Veterans' Administration regulations, the insurance premium will be treated as paid for the purpose only of preventing lapse of the insurance, although such deduction is not in fact made, if upon the due date of the premium there is due and payable to the insured an amount of disability compensation, retirement pay, or pension sufficient to provide the payment. Any premium authorized to be deducted from disability compensation, retirement pay or pension due and payable to the insured and not actually paid, shall be deducted from any amount of current disability compensation, retirement pay, or pension that may become due and payable to the insured. The amounts so deducted for premiums shall be deposited and covered into the Treasury to the credit of the military and naval insurance appropriation or the United States Government life insurance fund, as may be proper.

§ 6.23 *Termination of the authorization to deduct insurance premiums from disability compensation, retirement pay, or pension.* Deduction of insurance premiums on United States Government life insurance or on yearly renewable term insurance shall cease and the authorization shall terminate if the disability compensation, retirement pay, or pension becomes insufficient to provide the premium, or if disability compensation, retirement pay or pension is no longer due and payable to the insured. The insurance shall lapse after the termination or cancelation of the authorization to deduct premiums from disability compensation, retirement pay, or pension, unless the premium be otherwise paid within the grace period. The insured will be notified, by letter directed to his last address of record, of the termination of the authorization to deduct premiums; but the failure to give such notice or the failure to receive such notice, shall not prevent lapse of the insurance.

§ 6.24 *Deduction of premiums on total disability insurance.* An authorization to deduct premiums on a contract of United States Government life insurance in accordance with the provisions of §§ 6.20, 6.21, 6.22, and 6.23 will be deemed to include the premiums on any contract of total disability insurance that may be attached to said contract of United States Government life insurance, and the provisions of said sections shall be applicable jointly and inseparably to both contracts as though they were one contract.

§ 6.25 *Waiver of payment of premiums on the due date.* Subject to the conditions hereinafter set out, the yearly renewable term insurance and United States Government life insurance shall be deemed not to lapse by reason of the nonpayment of premiums on the due date thereof and unless paid by the insured, payment of such premiums on the due date thereof shall be waived in the cases of the following persons:

(a) Those who are confined in a hospital as patients of the Veterans' Administration for a compensable disability during the period while so confined.

(b) Those who are rated temporarily totally disabled by reason of an injury or disease entitling them to compensation, during the period of such total disability and while they are so rated.

(c) Those who are mentally incompetent and for whom no legal guardian has been appointed and who allowed their insurance to lapse while mentally incompetent. An application for waiver shall not be required in such cases and such waiver is to be retroactive to cover the premiums for the period of incompetency. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

§ 6.26 *Application for waiver of payment of premium on due date.* If the privilege of waiver of payment of insurance premiums on the due date thereof is desired by any person whose cases comes within the provisions of § 6.25 (a) and (b) and not within the provisions of § 6.25 (c), then written application shall be made by the applicant during his lifetime and such waiver shall not include the premium for any month prior to the month in which the application is made. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

§ 6.27 *Period covered by waiver of payment of premiums on due date.* The waiver of the payment of premiums on yearly renewable term insurance and United States Government life insurance on the due date thereof in accordance with the provisions of Veterans' Administration regulations, shall operate for full calendar months as follows:

(a) Beginning with the month of confinement to a hospital as a bureau patient for a compensable disability and ending with the last day of the last month during the half or major fraction of which the insured is confined in a hospital as a bureau patient for a compensable disability.

(b) Beginning with the month in which the temporary total disability rating is made effective and ending with the last day of the last month during the half or major fraction of which the insured is rated temporarily totally disabled.

(c) Beginning with the month in which the rating shows the person to have become mentally incompetent and ending with the last day of the last month during the half or major fraction of which the insured continues to be so rated and until the guardian has notified the Veterans' Administration of his qualification, but not later than six months after appointment as guardian. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

§ 6.28 *Premiums paid while waiver is effective.* Where a person entitled to waiver of the payment of insurance premiums on the due date, pays any amount on account of the premiums waived on his insurance, such amount shall not be refunded but his right to waiver of premiums during such period shall not terminate and a new application shall not be required. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

§ 6.29 *Premiums and interest to be an indebtedness against the insurance.* In all cases where the payment of premiums on yearly renewable term insurance and United States Government life insurance on the due date thereof has been waived as provided by bureau regulations the premium so waived shall bear interest at the rate of 5 percent per annum, compounded annually, from the due date of such premium, and if not paid the amount shall be an indebtedness against the policy to be deducted from the proceeds of insurance in any settlement thereunder or from the cash value when such value is taken in cash or used for the purpose of purchasing paid-up or extended insurance or making a loan: *Provided, however,* That the unpaid premiums with interest shall not be considered such an indebtedness as is set forth in paragraph 5 (D) of the contract of Government converted insurance, to cause the policy to cease and become void if the amount (premiums with interest) is greater than the cash surrender value, so long as premiums are paid by the insured or the payment on the due date thereof is waived by regulations of the Veterans' Administration. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

§ 6.30 *Lapse after expiration of waiver.* Yearly renewable term insurance and United States Government life insurance will lapse after the termination of a waiver of the payment of premiums on the due date thereof as provided in § 6.27, if premiums are not paid on the due date or within the grace period of 31 days. (Sec. 306, 43 Stat. 626; 38 U. S. C. 514)

GRACE PERIOD

§ 6.35 *Establishment of grace period.* For the payment of any premium under a United States Government life insurance policy, a grace period of thirty-one days without interest will be allowed, during which time the policy will remain in force; but if the policy shall become a claim within the grace period, the unpaid premium shall be deducted from the amount of insurance payable.

§ 6.36 *Computation of grace period.* For the purpose of determining whether a premium tendered on United States Government life insurance shall be accepted and a regular receipt issued therefor, the grace period for the payment of the premium shall be computed so as to include 31 days from and after the date

on which the premium was due. The postmark date will govern the date on which the premium was tendered. The monthly premium when paid shall be deemed to carry such insurance in force for the calendar month for which the premium was due. If a premium is not paid during the grace period, the effective date of the lapse shall be the due date of the premium in default.

POLICIES

§ 6.40 *Forms of policies.* The forms of policies of insurance described and designated below, bearing the signature of and now on file in the office of the Administrator of Veterans' Affairs are hereby prescribed for use in granting United States Government life insurance applied for in accordance with the provisions of the World War Veterans' Act and amendments thereto. Contracts of insurance are hereby authorized to be made in accordance with the terms and conditions set forth in the forms of policies described and designated as follows:

Ordinary life policy (Form 741).
Fire year level premium term policy (Form 735).
Twenty-payment life policy (Form 747).
Thirty-payment life policy (Form 748).
Twenty-year endowment policy (Form 749).
Thirty-year endowment policy (Form 750).
------ year endowment policy (Form 751).
The five-year level premium term policy (Form 735) is substituted for the five-year convertible term policy (Form 745).
Additions to or modifications of said policies may hereafter be made by the Administrator of Veterans' Affairs.

§ 6.41 *Form to be used in applying for converted insurance.* Applications to convert yearly renewable term insurance into the forms of United States Government life insurance described and designated in regulations of the Veterans' Administration in those instances where yearly renewable term insurance may be converted subsequent to July 2, 1927, shall contain provisions equivalent in effect to those set forth in the form on file in the office of the Administrator of Veterans' Affairs, and described and designated as application for conversion of Government war risk insurance, Form 739.

§ 6.42 *Forms of application and policies to be used in converting yearly renewable term insurance subsequent to July 2, 1927.* Contracts for the conversion of yearly renewable term insurance, which may be converted subsequent to July 2, 1927, as provided for in section 301 of the World War Veterans' Act, 1924, as amended, are hereby authorized to be made in the terms and conditions set forth in the forms of application and policies described and designated in regulations of the Veterans' Administration.

§ 6.45 *Incontestability of United States Government life insurance.* A United States Government life insurance policy shall be incontestable from the date of issuance or reinstatement, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and the policy is issued free of restrictions as to travel, residence, occupation, or military or naval service. However, no insurance shall be payable for death inflicted as a lawful punishment for crime or military offense, except when inflicted by the enemy: *Provided,* That the cash value, less any indebtedness, on the date of such death shall be paid to the designated beneficiary if living, or if there be no designated beneficiary alive at the death of the insured, the said value shall be paid to the estate of the insured. (Sec. 24, 46 Stat. 1001; 38 U. S. C. 518)

CHANGE IN PLAN

§ 6.47 *To a policy at a higher rate of premium as of original effective date.* A United States Government life insurance policy on any plan of insurance may be exchanged for a policy of the same amount, bearing the same date and based on the same age, on any plan of insurance issued by the Veterans' Administration at a higher rate of premium, upon payment of the difference between the reserve on the new policy and the reserve on the old policy. Such exchange will be made without medical examination and upon complete surrender of the policy while in force.

§ 6.48 *To a policy at a lower rate of premium as of original effective date.* A United States Government life insurance policy may be exchanged within five years from the effective date for a policy of the same amount, bearing the same date, and based on the same age, on any plan of insurance issued by the Veterans' Administration at a lower rate of premium, except the 5-year level premium term policy: *Provided,* The applicant is in good health and so states in his application and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition as may be required by the Administrator of Veterans' Affairs and on such forms as the Administrator of Veterans' Affairs may prescribe. The old policy must be in force under premium paying conditions and must be surrendered with all rights and claims thereunder. The difference between the reserve on the old policy and the reserve on the new policy, less any indebtedness, may be used to cover payment of future premiums or withdrawn in cash at the option of the insured. If the old policy has been in force for less than 12 months, the difference in reserve may be used only for the purpose of paying future premiums on the insurance and such premiums shall not be subject to withdrawal by the insured.

§ 6.51 *To a policy at a higher rate of premium as of a current effective date.* A United States Government life insurance policy on the 5-year convertible term plan or the 5-year level premium term plan may be exchanged for a policy of the same amount on any plan of insurance issued by the Veterans' Administration at a higher rate of premium, upon payment of the current monthly premium at the attained age of the insured for the plan of insurance selected. The reserve (if any) on the policy will be allowed as a credit on the current monthly premium. Such exchange will be made without medical examination, upon complete surrender of the policy while in force and within five years from the effective date of the policy.

BENEFICIARY OF UNITED STATES GOVERNMENT LIFE INSURANCE

§ 6.55 *Proof of relationship.* Whenever it is necessary for a claimant to prove relationship to a veteran, the procedure outlined in § 3.42 of this chapter will be followed.

§ 6.56 *Payment to estate of insured.* If no beneficiary be designated by the insured as beneficiary under a United States Government life insurance policy, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the present value of the remaining unpaid installments.

§ 6.57 *Payment to estate of beneficiary.* If the designated beneficiary under a United States Government life insurance policy survives the insured and dies before receiving all the installments payable and applicable, then there shall be paid to the estate of such beneficiary the present value of the remaining unpaid monthly installments.

§ 6.60 *Change of beneficiary.* The insured under United States Government life insurance shall have the right at any time, and from time to time and without the consent or knowledge of the beneficiary, to change the beneficiary. A change of beneficiary must be made by written notice to the Veterans' Administration over the signature of the insured and shall not be binding on the United States unless received and indorsed on the policy by the Veterans' Administration. A change of beneficiary must be forwarded to the Veterans' Administration by the insured or his agent and must be accompanied by the policy. A change of beneficiary may be indorsed during the lifetime of the insured or after his death, and when so indorsed said change shall be effective as of the date the insured signed the written notice of change of beneficiary. The United States shall be protected in all payments made to the beneficiary last of record and before receipt of notice of a change of beneficiary, and no payments so made shall be paid again to the changed beneficiary. The insured may exercise any right or privilege given under the provisions of a United States Government life insurance policy without the consent of the beneficiary. An original designation of a beneficiary may be made by the last will and testament, but no change of beneficiary may be made by the last will and testament.

§ 6.62 *Assignment, claims of creditors and taxation.* The proceeds of a United States Government life insurance policy shall not be assignable, except that any person to whom this insurance shall be payable may assign his interest in this insurance to any other beneficiary within the class permitted by the World War Veterans' Act or any amendments or supplements thereto. No such assignment of a United States Government life insurance policy shall be binding upon the

United States unless in writing and until filed in the Veterans' Administration, Washington, D. C. The United States assumes no responsibility for the validity of any assignment. The proceeds of a United States Government life insurance policy shall not be subject to the claims of creditors of the insured or creditors of any beneficiary to whom the proceeds may be awarded, except claims of the United States arising under the War Risk Insurance Act or the World War Veterans' Act. The proceeds of insurance are exempt from all taxation. (Sec. 3, 49 Stat. 609; 38 U. S. C. 454a)

OPTIONAL SETTLEMENT

§ 6.63 *Mode of payment at death or disability.* United States Government life insurance is payable in monthly installments of $5.75 for each $1,000 insurance in the event of total permanent disability of the insured or of his death unless one of the optional settlements is selected as provided in § 6.68; then, in the event of the death of the insured, the insurance is payable in accordance with the optional settlement so selected.

§ 6.64 *Selection, recording, revocation, and election.* The insured under a United States Government life insurance policy may select one of the optional settlements set forth in § 6.68, but notice of the selection shall not be valid unless and until it is recorded in the Veterans' Administration. The insured may revoke his selection of the optional settlement, but the revocation shall not be valid unless and until it is recorded in the Veterans' Administration. If the insured does not select one of the optional settlements, then he shall be deemed to have made no election, and the insurance shall be payable in 240 monthly installments, unless an election under option 2, 3 or 4 is made by the beneficiary.

§ 6.65 *Election of optional settlement by beneficiary.* If the insured under a United States Government life insurance policy has not selected one of the optional settlements then at the death of the insured the designated beneficiary may elect to receive settlement under option 2, 3 or 4, as provided in § 6.68, but such an election by the beneficiary shall not be valid unless and until it is recorded in the Veterans' Administration. If the insured has selected an optional settlement then at the death of the insured the designated beneficiary may elect to receive the proceeds of insurance in installments spread over a greater period of time than that selected by the insured and in accordance with the following provisions:

(a) If the insured has selected option 1, the beneficiary may elect to receive payment under option 2, 3 or 4.

(b) If the insured has selected option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2, or may elect to receive payment under option 3 or 4.

(c) If the insured has selected option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2, or may elect to receive payment under option 3.

(d) If the insured has selected option 3, and named no contingent beneficiary, the beneficiary may elect to receive payment under option 4.

(e) If the insured has selected option 4, the beneficiary may elect to receive payment under option 3.

If the insured has selected settlement under option 1, a beneficiary who has elected to receive payment under option 2, 3 or 4 may elect to receive the commuted value of any remaining unpaid installments certain (240 less the number paid in case of option 3, or 120 less the number paid in the case of option 4). Settlement under any one of the options or payment to the beneficiary of said commuted value shall be in full and complete discharge of all liability under the contract.

§ 6.67 *Values for optional settlements.* The value for optional settlements shown in a United States Government life insurance policy are based on an insurance of $1,000 without indebtedness. If there is an indebtedness under a United States Government life insurance policy, or if the insured has received any payments on account of total and permanent disability, the values will be decreased accordingly. If the policy provides for a larger amount of insurance than $1,000 the values will be increased proportionately.

§ 6.68 *Options.* The optional settlements under a United States Government life insurance policy in lieu of the monthly installments of $5.75 per thousand are as follows:

Option 1. Insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his lifetime or by his last will and testament. When such selection has been made, the face amount will be payable in one sum at the maturity of the policy by death.

Option 2. Insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but if such beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Number of monthly installments:	*Amount of installment for each $1,000 of insurance*
36	$29.19
48	22.27
60	18.12
72	15.35
84	13.38
96	11.90
108	10.75
120	9.83
132	9.09
144	8.46
156	7.94
168	7.49
180	7.10
192	6.76
204	6.47
216	6.20
228	5.97
240	5.75

Option 3. Insurance payable in installments throughout life. The installments noted below will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Age of beneficiary at time of death of the insured (years):	*Amount of installment for each $1,000 of insurance*
10	$3.67
15	3.75
20	3.84
25	3.96
30	4.11
35	4.30
40	4.52
45	4.79
50	5.07
55	5.35
60	5.56
65	5.70
70	5.75
75	5.75

Amounts of monthly installments for other ages will be calculated in accordance with the same formula as used in calculating the above table.

Option 4. Insurance payable in installments throughout life. The installments noted below will be payable throughout the lifetime of the designated beneficiary, but, if such designated beneficiary dies before 120 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Age of beneficiary at time of death of the insured (years):	*Amount of installment for each $1,000 of insurance*
10	$3.78
15	3.86
20	3.97
25	4.11
30	4.28
35	4.50
40	4.79
45	5.17
50	5.67
55	6.30
60	7.07
65	7.92
70	8.74
75	9.40
80	9.77
85	9.83

Amounts of monthly installments for other ages will be calculated in accordance with the same formula as used in calculating the above table.

§ 6.69 *Election of payments on matured endowments.* The insured under a United States Government life insurance policy issued on the endowment plan may, at the date of the maturity as an endowment, elect to receive payment in monthly installments under option 2 in lieu of payment in one sum. He shall have the right to designate the beneficiary or beneficiaries to receive any remaining unpaid installments at his death. If the insured dies before receiving all such monthly installments and no designated beneficiary survives, the present value of the remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat. If the designated beneficiary of a matured endowment survives the insured, the present value of any remaining unpaid installments shall be paid to such beneficiary in one sum, unless the insured or such beneficiary has elected to continue the installments under the option selected by the insured for payment of the endowment.

LAPSE

§ 6.71 *Lapse for nonpayment of premium.* If any premium be not paid when due, the United States Government life insurance policy shall cease and become void, except as otherwise provided in the policy contract.

§ 6.72 *Nonlapse while insured is in active military, naval, or Coast Guard Service.* Except as provided in § 6.73, United States Government life insurance will not lapse while the insured is in the active military, naval, or Coast Guard service of the United States, if an allotment of active service pay had been established to cover premiums for such insurance.

§ 6.73 *Lapse while insured is in active military, naval, or Coast Guard Service.* United States Government life insurance will lapse and terminate while the insured is in the active military, naval, or Coast Guard service of the United States:

(a) If the insured fails to designate a method of payment of premiums at the time of applying, or at any time elects to pay premiums on said insurance otherwise than by allotment of pay and such premiums are not paid prior to expiration of the grace period.

(b) If the service department shall discontinue the allotment and premium is not otherwise paid prior to expiration of the grace period.

§ 6.74 *Lapse at discharge or resignation from active service.* When the insured under a United States Government life insurance policy shall provide for payment of premiums by allotment of pay, any previously authorized method of payment of premiums shall be deemed to be revoked. The insurance will lapse upon termination of the allotment because of discharge or resignation from the active service unless the premium be paid prior to expiration of the grace period.

REINSTATEMENT

§ 6.78 *Provision for reinstatement.* Subject to the provisions of paragraph 3 of the present United States Government life insurance policy or a similar paragraph in any policy that may be issued under the World War Veterans' Act, 1924, or any amendment or supplement thereto, United States Government Life Insurance which has lapsed, or may hereafter lapse, may be reinstated upon evidence of the insurability of the applicant satisfactory to the Administrator of Veterans' Affairs and under the conditions stated in §§ 6.79, 6.80, 6.81, 6.90, and 6.92.

Reinstatement: The policy, if it has not been surrendered for a cash value, may be reinstated at any time after lapse upon evidence of the insurability of the insured satisfactory to the Administrator of Veterans' Affairs, and upon the payment of all premiums in arrears, with interest from their several due dates at the rate of 5 per centum per annum, compounded annually, to the first monthly premium due date after July 31, 1946, and thereafter at the rate of 4 per centum per annum, compounded annually, and the payment or reinstatement of any indebtedness which existed at the time of such default, with interest. However, if such indebtedness with interest would exceed the reserve of the policy at the time of application for reinstatement of said policy, then the amount of such excess shall, except as provided in § 6.81, be paid by the insured as a condition of the reinstatement of the indebtedness and of the policy.

§ 6.79 *Health requirements.* United States Government life insurance may be reinstated:

(a) Within three calendar months including the calendar month for which the unpaid premium was due, provided the applicant is in as good health as he was at the due date of the premium in default, and the application and tender of premiums are made within the said three months.

(b) After the expiration of the three calendar months mentioned in paragraph (a) provided the applicant is in good health.

§ 6.80 *Application and medical evidence.* The applicant for reinstatement of United States Government life insurance must furnish during his lifetime, and before becoming totally and permanently disabled, and within the three calendar months including the calendar month for which the unpaid premium was due, a written application signed by him which shall state that he is in as good health as at date of lapse, or after the expiration of the three calendar months, a written application signed by him that he is in good health, in accordance with the requirements of the particular case; and in addition the applicant shall furnish such evidence relative to his physical condition as may be required by the Administrator of Veterans' Affairs, and on such forms as may be prescribed: *Provided,* That if the insurance becomes a claim after tender of the amount of the premiums required but before full compliance with the requirements of this paragraph, and the applicant was in the required state of health at the date that he made the tender of the amount of premiums, and that there is a satisfactory reason for his noncompliance, the director, underwriting service, may, if the applicant be dead, waive any or all of the requirements of this paragraph, or, if the applicant be living, allow compliance with this paragraph, as of the date the required amount of premiums was received by the Veterans' Administration.

§ 6.81 *Indebtedness at time of reinstatement.* The United States Government life insurance shall not be deemed to be reinstated until satisfactory evidence of good health has been furnished and approved as required, and until all premiums in arrears have been paid with interest, and any indebtedness existing at the time of default has been paid or reinstated as set forth in the policy: *Provided,* That any indebtedness on account of unpaid service premiums and premiums waived under authority of section 306 of the World War Veterans' Act, 1924, as amended, may be reinstated, even though the amount of such indebtedness exceeds the reserve of the policy; and such indebtedness unless otherwise paid shall be deducted from the proceeds of insurance in any settlement thereof, or from the cash value when such value is taken in cash or used for the purpose of purchasing paid-up or extended insurance or making a loan: *Provided further,* That the amount of such unpaid premiums with interest shall not be considered an indebtedness as is set forth in paragraph 5 (D) of the contract of Government life insurance to cause the policy to cease and become void if the amount (premiums with interest) is greater than the cash surrender value of an insurance without indebtedness, so long as current premiums are being paid by the insured when due or the payment on the due date thereof is being waived as provided by Veterans' Administration regulations.

§ 6.82 *Reinstatement in the month following the date of lapse.* Where a premium on United States Government life insurance is not paid within the grace period, but is tendered not more than 15 days after the date of expiration of the grace period, such premium may be regularly applied as premium for the unpaid month, provided the insured at the time of tendering the delayed premium is in as good health as he was on the due date of the premium in default and furnishes a statement to that effect not more than 31 days after the date such delayed premium was tendered.

§ 6.83 *Reinstatement while applicant is in the active military or naval service.* If the insured is in the active military, naval, or Coast Guard service, the United States Government life insurance, if it has not been surrendered for a cash value, may be reinstated at any time by the payment of all premiums in arrears with interest from their several due dates at the rate of 5 percent per annum compounded annually, and the payment or reinstatement of any indebtedness which existed at the time of lapse, in accordance with the terms and conditions of the policy contract and under the following conditions:

(a) Within 3 calendar months including the calendar month for which the unpaid premium was due, provided the applicant is in as good health as he was on the due date of the premium in default.

(b) After the expiration of the period mentioned in paragraph (a) of this section provided the applicant is in good health and so states in his application, and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition and insurability as may be required by the Administrator, and on such forms as the Administrator may prescribe.

§ 6.85 *Reinstatement of policies in force under extended insurance.* A lapsed United States Government life insurance policy which is in force under extended term insurance may be reinstated without health statement or other medical evidence, if application and tender of premiums with interest are made not less than 5 years prior to the date such extended insurance would expire: *Provided,* That in any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period, such policy may be reinstated upon application and payment of the premiums with interest, and

health statement or other medical evidence will not be required.

§ 6.88 *Insurance previously terminated by reason of the insured's discharge from the service under other than honorable conditions.* Where United States Government life insurance or yearly renewable term insurance has heretofore been terminated because of the discharge or dismissal of the insured from the military or naval service on the grounds of mutiny, treason, spying, any offense involving moral turpitude, or willful and persistent misconduct, or that he was an enemy alien, conscientious objector, or deserter, or that he concealed the fact that he was a minor at time of his enlistment:

(a) If the insured becomes, or has become, totally and permanently disabled, or dies, or has died, in circumstances and other conditions which mature, or would have matured, such insurance, and requires, or would have required, payments thereunder except for such discharge or dismissal from the service, such insurance will be deemed to be, or to have been, in force at the time of such total permanent disability or death, and claims thereunder will be paid in the same manner and under the same conditions as other valid insurance claims.

(b) In other such cases the insurance will be deemed to have lapsed at the expiration of the grace period ensuing upon the insured's separation from the service, and may be reinstated in the same circumstances, under the same conditions, and upon the same terms as apply to other cases of reinstatement of lapsed insurance. Any amount previously paid, upon termination of such insurance, to or on account of any such insured person, as cash value of a United States Government life insurance policy, shall be deducted from the payment of any insurance claim herein provided for; and the repayment of any such previously paid cash value of United States Government life insurance shall be an additional prerequisite of any reinstatement hereunder. (Sec. 23, 43 Stat. 613; 38 U. S. C. 447)

PHYSICAL EXAMINATIONS AND INSPECTIONS

§ 6.90 *Examinations for insurance* purposes. (a) It is deemed necessary in order properly to safeguard the interests of the Government to require a physical examination by a full-time or part-time salaried physician at a field station of the Veterans' Administration in the following instances, subject to the provisions of Veterans' Administration Insurance Procedures: (1) When an application has been filed by a person for payment of insurance benefits on account of total or total and permanent disability; (2) when requested by the disability insurance claims service in central office for the purpose of review, as provided by regulation, of claims in which insurance benefits are being paid, to determine if the person has recovered the ability to follow a gainful occupation; (3) when requested by the disability insurance claims service in order to determine the existence of mental incompetency for the purpose of waiver of payment of an insurance premium on its due date. Examination will be made without charge to the claimant.

(b) Physical examinations required of applicants for insurance, under sections 310 and 311, or either, of the World War Veterans' Act, 1924, as amended, or for reinstatement of insurance, may be made free of charge to the applicant by a full-time or part-time salaried physician at a field station of the Veterans' Administration upon the request of the applicant, or upon the specific request of the underwriting service in central office in connection with an application for reinstatement of insurance when deemed necessary by that office in order properly to safeguard the interests of the Government. Physical examinations required of applicants for insurance, under sections 310 and 311, or either, of the World War Veterans' Act, 1924, as amended, or for reinstatement of insurance, may be made at applicant's own expense by a physician duly licensed for the practice of medicine by a State, Territory of the United States, or the District of Columbia, who is not related to the applicant by blood or marriage, associated with him in business or pecuniarily interested in the issuance or reinstatement of the policy. Examinations made in a foreign country by a physician, duly licensed for the practice of medicine and otherwise acceptable, may be accepted if submitted through the American Consul. The Administrator of Veterans' Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

§ 6.91 *Examinations and inspections for insurance purposes where applicant or claimant, by reason of his physical or mental condition, is unable to appear at a Veterans' Administration office.* If an individual is unable to travel, because of physical or mental condition, the manager of a field station may, on his own initiative or at the request of the insurance service in central office concerned authorize at Government expense examination at the home of the person to be examined in those instances in which, as provided by § 6.90, examination by a full-time or part-time salaried physician is deemed necessary properly to safeguard the interests of the Government. Examination at the home of an applicant for reinstatement of insurance can be authorized at Government expense only by the underwriting service in central office. (Sec. 6, 45 Stat. 965; 38 U. S. C. 459c)

§ 6.92 *Expenses incident to examinations for insurance purposes.* (a) Necessary transportation expenses incident to physical examination at field stations may be furnished subject to the governing provisions of § 17.100 of this chapter in the following instances: (1) When, upon filing of an application for payment of insurance benefits, an applicant is ordered to report for examination by the Veterans' Administration to determine the existence of total or total and permanent disability; (2) when an individual receiving payments of insurance benefits is ordered to report for the examination by the Veterans' Administration to determine if he has recovered the ability to follow a gainful occupation; (3) when an individual is ordered to report for examination by the Veterans' Administration to determine the existence of mental incompetency for the purpose of waiver of payment of an insurance premium on its due date.

(b) Necessary transportation expenses may be furnished subject to the governing provisions of § 17.100 of this chapter incident to a physical examination at a field station of the Veterans' Administration of an applicant for reinstatement of insurance provided that the applicant was ordered to report for the examination at the specific request of the underwriting service in central office.

(c) Such expenses will be borne by the United States and will be paid from the appropriation, "Salaries and Expenses, Veterans' Administration". Transportation, meal and lodging requests in connection with reporting to and returning from the place of examination will be furnished the applicant or claimant provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Veterans' Administration will be in accordance with the Standardized Government Travel Regulations. If such examination is made by a medical examiner on a fee basis, the fee will be based on the Schedule of Fees for Medical Services, Veterans' Administration, in force at the time the examination is made.

(d) Transportation expenses will not be furnished for examinations on applications for reinstatement of insurance or on applications for payment of insurance benefits on account of total or total and permanent disability where the applicants were not ordered to report for the examination by the Veterans' Administration, or on applications for new insurance. (Sec. 6, 45 Stat. 965; 38 U. S. C. 459c)

DIVIDENDS

§ 6.95 *How paid.* A United States Government life insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans' Affairs. Any dividends so apportioned may be taken in cash, and if not so taken, shall be left on deposit to accumulate at such rate of interest as the Administrator of Veterans' Affairs may determine, but a rate never less than 3½ percent compounded and credited annually and payable, if not previously withdrawn, at the maturity of the policy to the person entitled to its proceeds.

LOANS

§ 6.100 *Policy loan; other than 5-year convertible term policy.* At any time after the expiration of the first policy year and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the sole security of his United States Government life insurance policy, any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall

be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 6 percent per annum, payable annually, and at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or any multiple thereof. Failure to pay either the amount of the loan or the interest thereon shall not avoid the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value the policy shall cease and become void.

§ 6.101 *Policy loan; 5-year convertible term policy.* At any time after the expiration of the sixth policy year and before default in payment of any subsequent premium and upon execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the sole security of his United States Government life insurance policy on the 5-year convertible term plan any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 6 percent per annum, payable annually, and at any time before default in payment of premium, the loan may be repaid in full or in amounts of $5 or any multiple thereof. Failure to pay either the amount of the loan or the interest thereon shall not avoid the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

§ 6.102 *Rate of interest on policy loans on and after July 19, 1939.* Section 7 of Public No. 198, 76th Congress, 1st Session, approved July 19, 1939, is quoted as follows:

> On and after the date of enactment of this act, the rate of interest charged on any loan secured by a lien on United States Government life (converted) insurance shall not exceed 5 per centum per annum.

On and after July 19, 1939, and except as provided below, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 5 per centum per annum.

On and after August 1, 1946, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 4 per centum per annum. (Sec. 7, 53 Stat. 1070; 38 U. S. C. 512b–1)

EXTENDED TERM INSURANCE

§ 6.105 *Provision for extended term insurance.* (a) After the expiration of the first policy year and upon default of a premium within the grace period, if a United States Government life insurance policy on any plan other than five-year level premium term has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall be with right to dividends, payable in cash only, and with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such extended term insurance will be the same as would then be payable under the policy. The extended term insurance shall not have a loan value, but shall have a cash value.

(b) Upon default in payment of a premium within the grace period and after the effective date of this subparagraph on any plan of United States Government life insurance other than five-year level premium term, if the policy has been in force by payment or waiver of the premiums for not less than three months nor more than 11 months, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the reserve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effective. The extended term insurance shall be with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such extended term insurance will be the same as would then be payable under the policy. Extended term insurance under this provision shall not have a cash or loan value. This paragraph shall be effective from and after August 2, 1948.

§ 6.106 *Extended insurance in case of total permanent disability.* In case total permanent disability occurs during the period of extended insurance under a United States Government life insurance policy and payments are made on account of such disability and recovery from such disability also takes place, then (a) if the recovery takes place before the end of the period of extended insurance, the insurance shall be reduced accordingly, and the insurance as reduced, shall be continued in force; (b) if the recovery takes place after the end of the period of extended insurance, all rights and claims hereunder shall cease, except as to the privilege to reinstate.

PAID-UP INSURANCE

§ 6.110 *Provision for paid-up insurance.* If a United States Government life insurance policy has not been surrendered for cash, upon default in the payment of any premium due after the expiration of the first policy year, and upon written request of the insured and complete surrender of the policy with all claims thereunder within three calendar months after the due date of the premium, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. The paid-up insurance shall be with right to dividends and with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such paid-up insurance will be the same as would then be payable under the policy. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.

§ 6.111 *Paid-up insurance in case of total permanent disability.* If one or more monthly installments be paid on account of total permanent disability incurred under a paid-up insurance, then there shall be paid to the beneficiary upon the surrender of policy at the death of the insured the remaining unpaid installments (240, less the number paid). If an optional settlement has been selected, payments shall be made accordingly.

CASH VALUE

§ 6.115 *Cash value, other than 5-year level premium term policy.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 6.105, shall become effective at the completion of the first policy year on any plan of United States Government life insurance other than the 5-year level premium term plan; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3½ percent per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full or waived, shall be the reserve together with any dividend accumulations. For each month after the first policy year, for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the policy with all claims thereunder, made by the insured while the policy is in force, but not later than three calendar months from the due date of the premium in default, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least one year.

§ 6.116 *Cash value; five-year convertible term policy.* The cash value, paid-up insurance, extended insurance, and policy loan provisions under a United States Government life insurance policy on the 5-year convertible term plan shall be effective at any time after the comple-

tion of the sixth policy year, all values, reserves, and net single premiums being based on the American Experience Table of Mortality with interest at the rate of 3½ percent per annum. The cash value at the end of the sixth policy year and at the end of any policy year thereafter for which premiums have been paid in full shall be the reserve together with any dividend accumulations. For each month after the sixth policy year for which month the premium has been paid the reserve at the end of the preceding year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the policy with all claims thereunder made by the insured while the policy is in force but not later than three calendar months from the due date of the premium in default the United States will pay to the insured the cash value of the policy less any indebtedness.

§ 6.117 *Values for first five years; five-year convertible term policy.* After a United States Government life insurance policy on the 5-year convertible term plan has been in force by the payment of premiums for 12 months and before the expiration of the 5-year term period the reserve, if any, together with any dividend accumulations less any indebtedness may be paid to the insured in cash or used to purchase paid-up term insurance for the unexpired portion of the 5-year term period provided the insured makes written request therefor and surrenders the policy before the expiration of the grace period. If the insured does not make written request and surrender of the policy before the expiration of the grace period, then the reserve if any, plus any dividend accumulations, less any indebtedness will be used as a net single premium to purchase extended term insurance from the due date of the premium in default, but not to extend beyond the termination of the 5-year term period.

INDEBTEDNESS

§ 6.118 *Collection of unpaid premiums.* When it becomes necessary to collect and deduct unpaid premiums and interest due under yearly renewable term or United States Government life insurance pursuant to the World War Veterans' Act, 1924, and amendments, such unpaid premiums and interest shall be deducted from the amount of the insurance (commuted value of the installments then due and payable), thus reducing the amount of each monthly installment in the proportion that the amount of the indebtedness bears to the amount of insurance.

§ 6.119 *Collection of any indebtedness.* At the maturity of a United States Government life insurance policy by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the commuted value of monthly installments as may then be payable under the policy, excluding dividend accumulations. If the policy is payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.

TOTAL PERMANENT DISABILITY BENEFITS

§ 6.120 *Total permanent disability benefits.* Upon due proof of the total permanent disability of the insured while a United States Government life insurance policy is in force, the monthly installments, except as otherwise provided, shall be payable to the insured and continue to be so payable during total permanent disability so long as he lives, and payment of all premiums due after receipt of such proof during total permanent disability shall be waived.

§ 6.121 *Definition of total permanent disability.* Total permanent disability as referred to in a United States Government life insurance policy, is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation and which is founded upon conditions which render it reasonably certain that the total disability will continue throughout the life of the disabled person. The total permanent disability benefits may relate back to a date not exceeding six months prior to receipt of due proof of total permanent disability and any premium paid after receipt of due proof of total permanent disability, and within the six months shall be refunded without interest: *Provided,* That where the insured becomes or has become totally and permanently disabled while outside the continental limits of the United States and because of war conditions could not feasibly file claim therefor, such benefits may relate back to the beginning date of such disability, but not prior to December 7, 1941: *Provided,* That claim therefor is filed within one year after discharge, or the insured's return to the continental limits of the United States, or prior to July 1, 1947, whichever is the earlier.

§ 6.122 *Disabilities deemed to be total and permanent.* Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden, shall be deemed to be total and permanent disability under United States Government life insurance, and monthly installments of insurance for any of these specifically enumerated causes of total and permanent disability shall accrue from the date of such total and permanent disability, and any premiums paid after the date of such total and permanent disability shall be refunded without interest. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, because of organic changes in the organs involved. (The provisions of this section shall not be applicable to contracts of United States Government life insurance originally issued subsequent to December 15, 1936.) (Sec. 9, 44 Stat. 794, sec. 7, 50 Stat. 661; 38 U. S. C. 473, 512c)

§ 6.123 *Recovery from total permanent disability.* Notwithstanding proof of total permanent disability may have been accepted as satisfactory, the insured shall at any time, on demand, furnish proof satisfactory to the Administrator of Veterans' Affairs of the continuance of such total permanent disability, and if the insured shall fail to furnish such proof, all payments of monthly installments on account of such total permanent disability under a United States Government life insurance policy shall cease and all premiums thereafter falling due shall be payable in conformity with the policy. Thereafter the premium to be paid, and the cash values, paid-up insurance values, and loan values shall be reduced so that the resulting premium and values shall bear the same proportion to the premiums and values, respectively specified on the policy, that the commuted values of the remaining installments (240 installments, less the number paid), bears to the commuted value of 240 installments. The extended insurance values shall be modified accordingly. (See § 6.181.)

DEATH BENEFITS

§ 6.125 *Due proof of the death of the insured.* Upon due proof of the death of the insured while a United States Government life insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured, the first installment being due on the date of the death of the insured, shall be paid to the beneficiary designated, and thereafter the payment of the monthly installments shall continue to be so payable until 240 installments in all, including any paid to the insured during his lifetime on account of total permanent disability, shall have been paid; but if 240 or more installments shall have been paid to the insured on account of total permanent disability, no death benefit shall be payable. If optional settlement 1, 2, or 3 has been selected, payment shall be made accordingly, subject to deduction on account of total permanent disability payments.

§ 6.126 *Death by suicide.* Payment of claims arising under yearly renewable term insurance and United States Government life insurance validly granted in accordance with any of the provisions of Article IV of the War Risk Insurance Act, or in accordance with any of the provisions of Title III of the World War Veterans' Act, now included under said titles or hereafter enacted, where said insurance was in force at the time of the death of the insured, shall not be refused or contested on the ground that death was by suicide, sane or insane.

§ 6.127 *Evidence to establish death of the insured.* Whenever a claim is filed on account of the death of a person insured under yearly renewable term insurance or United States Government life insurance, the proof of death shall be established in accordance with the procedure outlined in § 3.55 of this chapter.

YEARLY RENEWABLE TERM INSURANCE

§ 6.130 *Premium.* The monthly premium on yearly renewable term insurance shall be due and payable on the 1st day of the calendar month and, if paid when due or within the grace period, the premium shall be deemed to carry the insurance in force for the then current calendar month. If a premium be not

paid when due or within the grace period, the insurance shall lapse and terminate as of the due date of the premium.

§ 6.131 *Grace period.* The premium on yearly renewable term insurance due and payable on the 1st day of any calendar month may be paid at any time within 31 days from and excluding the 1st day of said month, which period of 31 days shall constitute a grace period for the payment of the premium. The insurance shall remain in force during the grace period but if the insured becomes totally and permanently disabled or dies during such grace period the unpaid premiums will be deducted from the amount of insurance. If a premium is not paid when due or within the grace period, the effective date of lapse shall be the due date of the premium in default.

§ 6.132 *Annual increase in premium rate.* The yearly renewable term insurance was issued at the monthly premium rate for the age nearest birthday of the insured when the insurance became effective. The monthly premium rate on the insurance shall increase on July 1 of each year to the rate for an age one year older according to the schedule of premium rates set forth on the reverse side of Treasury Department Form 2–A, Bureau of War Risk Insurance, entitled "Application for Insurance."

§ 6.133 *Age understated; insurance in force.* If the age of the insured under yearly renewable term insurance has been understated and the insurance is in force and has not matured, the insured shall be notified to pay the premium arrearage due with interest at the rate of 5 percent per annum in order to maintain the amount of insurance originally applied for. If the insured has not paid the arrearage within 60 days after notice, the amount of insurance shall be reduced to the greatest amount which is a multiple of $500 below the exact amount of insurance purchased by the premium being paid. In such cases the excess premiums over those necessary for the purchase of the reduced amount of insurance (in multiples of $500) shall be returned to the insured without interest.

§ 6.134 *Age understated; at maturity.* If there has been a misstatement of the age of the insured under yearly renewable term insurance and the insurance has matured, the amount of insurance payable shall be such exact amount not in excess of $10,000 which the premium paid would have purchased at the correct age irrespective of whether such amount of insurance is a multiple of $500.

§ 6.135 *Age overstated; in force or at maturity.* If the age of the insured under yearly renewable term insurance has been overstated and premiums have been paid which would have purchased insurance in excess of $10,000, then the excess premiums without interest shall be returned to the insured if living, otherwise to the beneficiary.

§ 6.136 *Insured incompetent.* In any case where on July 2, 1927, conversion of yearly renewable term insurance into United States Government life insurance was impracticable or impossible due to the mental condition of the insured, such yearly renewable term insurance may be continued in force so long as such mental condition continues, by the payment of premiums as they become due or prior to the expiration of the grace period, or by a waiver of the payment of the premium on the due date thereof only as provided by § 6.25. Where the yearly renewable term insurance has been so continued in force after July 2, 1927, because of the mental condition of the insured, there shall be allowed the insured an additional period of two years from the date he recovers from his mental disability in which to convert the yearly renewable term insurance, provided the insurance does not lapse due to nonpayment of premium.

§ 6.137 *Insured disappeared.* In any case where the insured under yearly renewable term insurance has disappeared and his whereabouts are unknown and such disappearance continued after July 2, 1927, and evidence satisfactory to the Administrator of the disappearance of the insured is furnished by the interested party or parties, and the yearly renewable term insurance granted to the insured in accordance with the provisions of the War Risk Insurance Act, as amended, and continued under the World War Veterans' Act, 1924, as amended, is in force by the payment of premiums to include the month of June, 1927, such yearly renewable term insurance may thereafter be continued in force by the payment of premiums each month as they become due, or prior to the expiration of the grace period, during the continued disappearance of the insured. If the whereabouts of the insured become known to the party or parties in interest the Veterans' Administration shall be immediately notified and the insured shall have two years from date of reappearance within which to apply for the conversion of his yearly renewable term insurance, provided, the insurance does not lapse due to nonpayment of premiums.

§ 6.138 *Evidence of disappearance.* Evidence of disappearance of the insured under yearly renewable term insurance must be furnished by the beneficiary of record or anyone who may be interested in continuing the insurance protection on behalf of possible beneficiaries. Such evidence must be in the form of affidavits submitted by at least two persons who are in a position to know of the insured's disappearance by reason of their relationship, friendship, or business association with the insured, or if such affidavits are not procurable then affidavits will be accepted from any other persons in a position to know the facts. The affidavits should state what efforts, if any, have been made to locate the insured. The affidavits must be submitted on such forms as may be prescribed by the Administrator and must be sufficient to establish as a fact that the insured disappeared on or before July 2, 1927. The parties in interest will be required to obligate themselves to notify the Veterans' Administration if and when they receive information as to the insured's whereabouts.

§ 6.139 *Total permanent disability.* Any impairment of mind or body which renders it impossible for the disabled person (insured under yearly renewable term insurance) to follow continuously any substantially gainful occupation shall be deemed to be total disability. Total disability shall be deemed to be "permanent" whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been paid on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation the payment of installments of insurance shall be discontinued forthwith and no further installments thereof shall be paid so long as such recovered ability shall continue. (40 Stat. 409; 34 U. S. C. 241)

§ 6.140 *Disabilities deemed to be total and permanent.* Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, shall be deemed to be total and permanent disability under yearly renewable term insurance and automatic insurance. Monthly installments of insurance for any of these specifically enumerated causes of total and permanent disability shall accrue from the date of such total and permanent disability, and any premiums paid after the date of such total and permanent disability shall be refunded without interest. (Sec. 7, 50 Stat. 661; 38 U. S. C. 512c)

§ 6.141 *Total permanent disability award terminated.* When an insured under yearly renewable term insurance is receiving insurance benefits on account of a total and permanent disability award and such award is terminated, the insured may, if he so desires, renew the payment of premiums on the reduced amount of term insurance (the commuted value of the remaining unpaid installments).

§ 6.142 *Continuance and conversion.* The first premium on the reduced amount of yearly renewable term insurance will be due and payable on the first day of the month following the month in which the last installment paid under the total and permanent disability award became due, and subsequent premiums will be due and payable on the first day of each month thereafter until the said reduced amount of yearly renewable term insurance is converted or expires as hereinafter provided. All of the reduced amount of yearly renewable term insurance, or any part thereof in multiples of $500 may be continued in force by the payment of premiums as they become due for two years from the due date of the first premium payable after termination of the total and permanent disability award, during which period the said term insurance may be converted into one or more of the plans of the United States Government life

insurance, but if all or any part of such term insurance be not so converted, the same shall cease and terminate.

§ 6.143 *Period allowed for resumption of payment of premiums after termination of a total permanent disability award.* The yearly renewable term insurance shall not lapse during the period between the termination of the total and permanent disability award and thirty-one days from date of notice to the insured advising him of the reduced amount of insurance and the amount of the premium, but if any premium or premiums due and payable during that time be not paid within thirty-one days from date of said notice or within thirty-one days from the due date of the first premium, whichever is the later date, or if any subsequent premium be not paid on the due date or within the grace period of thirty-one days thereafter, the insurance shall lapse but may be reinstated as provided in § 6.144. A letter mailed by the Veterans' Administration to the insured at his last known address informing him of the termination of the insurance award and the amount and due date of the premium on the reduced amount of insurance will be sufficient notice within the provisions of this regulation. The non-receipt of such letter will not excuse the non-payment of premium.

§ 6.144 *Reinstatement of insurance after termination of a total permanent disability award.* Yearly renewable term insurance may be reinstated in whole or in part at any time within the period of two years from the due date of the first premium payable after termination of the total permanent disability award by the tender of an amount sufficient to pay all premiums from date of lapse with interest at the rate of five per centum per annum, compounded annually from the due date of each premium, and by furnishing a report of a physical examination and such other evidence as to the applicant's physical and mental condition as may be required by the Administrator and on such forms as may be prescribed, *Provided*, That the applicant is not totally and permanently disabled, *And provided, further*,

(a) That the applicant is in as good health as he was on the due date of the premium in default, or

(b) If not in as good health, that his disability is the result of an injury or disease or an aggravation thereof suffered or contracted in the military or naval service during the period of the World War.

§ 6.145 *Change of beneficiary.* The insured under yearly renewable term insurance shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary, to change the beneficiary within the class of beneficiaries permitted by the World War Veterans' Act or any amendment or supplement thereto. A change of beneficiary to be effective shall be made either (a) by the last will and testament of the insured, or (b) by notice in writing to the Veterans' Administration signed by the insured or by his duly authorized agent. Whenever practicable such notices shall be given on blanks prescribed by the Veterans' Administration. No change of beneficiary shall be effective until the same has been received and recorded in the Veterans' Administration. Payments of installments of the insurance shall be made to the beneficiaries last of record in the Veterans' Administration until the change of beneficiary has been received and recorded.

CLAIMS ALLEGING INSURANCE CONTRACT WHERE THERE IS NO APPLICATION FOR INSURANCE ON FILE

§ 6.150 *Claims alleging insurance contract where there is no application for insurance on file.* In those cases where claim is made alleging that a person made valid application for yearly renewable term (War Risk) insurance or United States Government life insurance and that the insurance is subject to reinstatement, or that such insurance matured by reason of the total and permanent disability or death of the person at a time when the insurance was in force, and in case of death that there was a valid designation of beneficiary, and where there is no application for insurance on file, the claimant will be required to submit all available evidence concerning the alleged application for insurance in such manner and on such forms as may be deemed necessary. The evidence submitted by the claimant and the evidence as disclosed by records in possession of the Government will be considered by the director of insurance and if found sufficient to establish as a fact that the said person did apply for insurance and if the other allegations of said claim are sustained a record of insurance will be established in accordance with such finding. However, if the director of insurance decides that the evidence is not sufficient to establish as a fact that the said person applied for insurance as alleged, or decides that if insurance had been applied for as alleged the same would not be valid or not subject to reinstatement, or decides that the said person did not become permanently and totally disabled or die at a time when the insurance would have been in force if insurance had been applied for, or in case of death that there was no valid designation of beneficiary, the claimant will be so informed and will be notified that unless he desires to appeal to the Administrator a disagreement exists as to the matters in controversy as contemplated by the provisions of section 19 of the World War Veterans' Act, 1924, as amended, as far as the Veterans' Administration is concerned. Further, the claimant will be informed that an appeal may be taken from the decision to the Administrator of Veterans' Affairs by giving notice in writing within sixty days from the date of the letter advising of the unfavorable decision.

PAYMENT OF INSURANCE BENEFITS TO MINORS FOLLOWING DISCHARGE FROM THE MILITARY OR NAVAL FORCES

§ 6.153 *Payment of insurance benefits to minors following discharge from the military or naval forces.* The minority of a person who has been discharged from the military or naval forces of the United States will not preclude direct payment of either Government life insurance or National Service Life Insurance to such person. (Section 21 (1), World War Veterans' Act as amended by Public No. 262, 74th Congress.) (Sec. 21 (1), 49 Stat. 607; 38 U. S. C. 450)

DEFINITION OF "GOOD HEALTH"

§ 6.155 *Definition.* The words "Good Health" when used in connection with insurance, mean that the applicant is, from clinical or other evidence, free from disease, injury, abnormality, infirmity, or residual of disease or injury to a degree that would tend to weaken or impair the normal functions of the mind or body or to shorten life. (Sec. 15, 45 Stat. 970, sec. 25, 46 Stat. 1002; 38 U. S. C. 512a, 512b)

ARMED FORCES LEAVE BONDS

§ 6.156 *Assignment for insurance purposes.* (a) Pursuant to authority contained in the Armed Forces Leave Act of 1946, approved August 9, 1946 (Pub. Law 704, 79th Cong.), as amended by Public Law 254, 80th Congress, approved July 26, 1947, any bond issued thereunder to a person holding United States Government life insurance (or National Service Life Insurance) may be assigned by such person to the Veterans' Administration for the purpose of making payments on such insurance, as follows:

(1) Tender of premiums on existing insurance.

(2) Tender of premiums in connection with application for new insurance.

(3) Tender of premiums in connection with application for reinstatement of lapsed insurance.

(4) Payment of the difference in reserve when converting term insurance or when changing from one permanent plan to another having a higher reserve value.

(5) Payment, wholly or in part, of any policy loan made prior to July 31, 1946, with interest to that date.

(b) The assignment will be for the full amount of the bond and the bondholder will be credited with an amount equal to the principal of the bond plus interest accruing to the end of the month in which the assignment is made. The date of assignment shall be the date of delivery of the bond on valid assignment to the Veterans' Administration. Where delivery is effected by mail, the date of assignment shall be the date of deposit in the mail, provided the envelope in which the bond is enclosed is properly addressed and delivered to the Veterans' Administration without return to the sender.

(c) The proceeds of the bond will be used to make payment on the insurance as directed by the insured, subject to the provisions of paragraph (a) of this section, and any balance over the amount necessary to make such payment will be refunded to the insured if living, otherwise to his estate, provided there will be no escheat.

(d) Provisions of the regulations and of the policy for cash value, paid-up insurance and extended term insurance, as well as those relating to policy loans, shall be applicable to any insurance on which payments have been made by assignment of Armed Forces Leave Bonds.

(e) The assignment may be made by the veteran's agent when acting under

a special power of attorney or letter of authority containing definite and specific instructions regarding the use of the proceeds of the bond. If the veteran is incompetent, the assignment may be made by his legal guardian or if there be no legal guardian and such veteran is hospitalized or receiving domiciliary care at a field station of the Veterans' Administration or a State hospital or other institution, the assignment may be made by the Manager of the field station or head of the State hospital or institution, as would be appropriate in the particular case, provided there are no other funds available for payment of the premiums. The Manager of the field station or head of a State hospital or other institution may make such assignment only for the purpose of paying premiums on the existing insurance. The guardian may make the assignment for the purpose of paying premiums on the existing insurance, repaying a loan with interest on such insurance, and, if authorized to do so by the court, when converting to a permanent plan.

(f) This section shall be effective as of September 2, 1947. (60 Stat. 963, Public 254, 80th Cong.; 37 U. S. C. 32 note)

TOTAL DISABILITY PROVISION FOR UNITED STATES GOVERNMENT LIFE INSURANCE

§ 6.159 *Withdrawal of the total disability provision authorized by section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928 (§ 6.160).* Section 311 was added to the World War Veterans' Act, 1924, as amended, by section 16 of the amendment approved May 29, 1928 (45 Stat. 970). Section 25 of the amendment to the World War Veterans' Act, 1924, as amended, approved July 3, 1930, amended and superseded section 311 and thereby terminated as of July 3, 1930, the authority for issuing the total disability provision incorporated in § 6.160. However, as to the total disability provision which was issued and made a part of certain United States Government Life Insurance policies on applications submitted prior to July 3, 1930, the said § 6.160 will remain in full force and effect. (Sec. 25, 46 Stat. 1002; 38 U. S. C. 512b)

§ 6.160 *Rights and privileges.* The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928 (45 Stat. 970), is as follows:

(a) Under the authority of section 311 of the World War Veterans' Act as amended May 29, 1928, the following disability provision is hereby added to and becomes a part of policy K-_____, effective _____, on the life of _____.

(b) In consideration of the application therefor and evidence of good health, and payment of the additional monthly premium of $_____ payable under the same terms and conditions as the regular monthly premium on the insurance contract, until the maturity of this policy by death, total permanent disability or as an endowment, or until receipt of proof of total disability for twelve consecutive months or longer, the United States hereby agrees to pay disability benefits of $5.75 per month for each $1,000 insurance as shown on the face of the policy, upon receipt of due proof, before default in payment of any premium; that the insured hereunder is totally disabled, and has been so totally disabled for a period of twelve consecutive months or more. Monthly payments shall continue during the continuance of such total disability, and during the period of such payments all premiums on such insurance, including the premiums for this disability provision, shall be waived and any premiums tendered for such period shall be refunded to the insured, if living, otherwise, to the beneficiary. Such payment of benefits and waiver of premiums shall be effective as of the date of the beginning of total disability.

(c) The payment of a monthly income by reason of the total disability of the insured in accordance with this provision may be concurrent with or independent of the insured's right to receive total permanent disability benefits under the policy. Neither the payment of a monthly income under this provision nor the payment of total permanent disability benefits under the policy shall reduce the amount of the monthly income payment payable for total disability under this provision, or the amount of the monthly instalment payable for total permanent disability under the policy.

(d) Total disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation. The Administrator of Veterans' Affairs shall have the right to require proof of the continuance of such total disability at any time or times during the first two years after receipt of proof of total disability, but not more frequently thereafter than once a year. If the insured shall fail to furnish satisfactory proof thereof, no further premiums will be waived and no further monthly disability payments will be made hereunder on account of such disability.

(e) In the event it is found that the insured is no longer totally disabled, the payment of benefits and the waiver of premiums shall cease and the insured shall be privileged to continue the amount of insurance as provided by the terms of the policy as modified by this regulation upon payment of the monthly premium, and the total disability provision upon payment of the monthly premium specified in this agreement.

(f) The waiver of premiums and the payment of the monthly income, as herein provided shall be in addition to all other benefits and privileges under the policy including the participation in such dividends on the policy as may be determined by the Administrator of Veterans' Affairs.

(g) Any installments due and payable under this provision if not paid during life of insured shall be paid to the beneficiary under the policy.

(h) No benefits shall be payable under this provision for disabilities occurring after surrender of policy or after policy has matured as an endowment or while protection is afforded under extended insurance provision of the policy.

(i) Upon surrender and acceptance of paid-up insurance for less than the face value of such policy, a total disability provision may be included in such paid-up insurance policy, providing for a monthly disability benefit of $5.75 for each $1,000 insurance. Such disability provision will not be included in any paid-up insurance policy of less than $1,000 face value.

(j) This provision may be reinstated after lapse, together with the policy, by compliance with the same terms and conditions provided for reinstatement of the policy of insurance to which this agreement is attached. This includes the payment of all premiums in arrears with interest at 5 per centum per annum, compounded annually.

(k) This agreement takes effect on the _____ of _____ 19_____.

All claims arising under the provisions of section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928, will be settled in accordance with the provisions of § 6.160, as hereby amended. (Sec. 16, 45 Stat. 970; 38 U. S. C. 512b)

§ 6.161 *Authority for the total disability provision provided in section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930.* The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930 (title 38, section 512b, U. S. C.), is subject in all respects to the provisions of the World War Veterans' Act, 1924, of any amendments thereto, and all regulations under the World War Veterans' Act, 1924, now in force or hereafter adopted: all of which together with the insured's application, report of physical examination, tender of premium, and the total disability provision shall constitute the contract. (Sec. 25, 46 Stat. 1002; 38 U. S. C. 512b)

§ 6.162 *Application for total disability provision authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930.* Applications for the total disability provisions for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930 (title 38, section 512b, U. S. C.), and the report of physical examination shall be on such forms as may be prescribed by the Veterans' Administration, but any statement in writing sufficient to identify the applicant and the amount of insurance applied for, together with a report of a physical examination and remittance sufficient to cover the first monthly premium will be sufficient as an application for the total disability provision. (Sec. 25, 46 Stat. 1002; 38 U. S. C. 512b)

§ 6.163 *Effective date of the total disability provision authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930.* The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930 (title 38, section 512b, U. S. C.), will be effective:

(a) The first day of the month in which all requirements are complied with, or

(b) The first day of the month following the month in which all requirements are complied with, if so requested by the applicant at the time of applying, or

(c) The same date as the effective date of the Government life insurance policy, if both the policy and the total disability provision are applied for at the same time, or

(d) If the United States Government life insurance policy is dated back, or has already been issued and bears a date other than the first day of a month, the total disability provision will be effective as of the corresponding day in the month in which all requirements are complied with unless the applicant requests that it become effective as of the corresponding day in the following month. (Sec. 25, 46 Stat. 1002; 38 U. S. C. 512 b)

§ 6.164 *Total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930.* The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, is as follows:

UNITED STATES GOVERNMENT LIFE INSURANCE

TOTAL DISABILITY PROVISION

Age of insured _____ Monthly _____
Quarterly _____
Attached to Policy Semiannual _____
No. K-_____ Annual _____

Provision for waiver of premiums and payment of monthly income attached to and made a part of United States Government life insurance policy No. K-_____ in the amount of $_____ issued on the life of _____ _____ hereafter designated as the insured.

If the insured becomes totally disabled as the result of disease or injury and is continuously so disabled for a period of four consecutive months or more before attaining the age of sixty-five years and before default in payment of any premium and if due proof satisfactory to the Administrator of Veterans Affairs (hereinafter referred to as the Administrator) of such disability and the continuance of such disability is furnished before default in payment of a premium on this provision or within one year from the due date of the premium in default, the United States of America will:

(a) Waive the payment of each premium on the policy and on this provision, beginning with the first monthly premium falling due after the monthly income becomes payable and continuing as long as such monthly income is paid. Any premiums tendered for the period covered by the waiver will be refunded to the insured if living, otherwise to the designated beneficiary.

(b) Pay to the insured a monthly income at the rate of $5.75 for each $1,000 insurance as shown on the face of the policy, on any multiple of $500. Such payments shall be effective as of the first day of the fifth consecutive month of continuous total disability and shall continue to be so payable during such total disability. Any monthly income payments due the insured by reason of total disability and not paid during his lifetime, shall be paid to the beneficiary under the policy.

Total disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation. The monthly income payments may relate back to a date not exceeding six months prior to receipt of due proof of such total disability but not prior to the first day of the fifth consecutive month of continuous total disability: *Provided,* That where the insured becomes or has become totally disabled while outside the continental limits of the United States and because of war conditions could not feasibly file claim therefor, such benefits may relate back to the first day of the fifth consecutive month of continuous total disability, but not prior to December 7, 1941: Provided claim therefor is filed within one year after discharge or the insured's return to the continental limits of the United States, or prior to July 1, 1947, whichever is the earlier. Without prejudice to any other cause of disability, the loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden, shall be deemed to be total disability, and monthly income payments for any of these specifically enumerated causes of total disability may be paid from the first day of the fifth consecutive month of such continuous total disability. However, such anatomical and functional loss shall not be deemed to be a total disability under a total disability provision originally issued subsequent to December 15, 1936.

Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator shall have the right to require proof of the continuance of such total disability at any time or times during the first two years after receipt of proof of total disability, but not more frequently thereafter than once a year. If the insured shall fail to furnish evidence satisfactory to the Administrator of the continuance of such total disability, or if it appears to the Administrator that the insured is able to engage in an occupation or perform work for compensation or profit, no further monthly income payments will be made and no further waiver of the payment of premiums will be granted, and thereafter premiums on the policy and on this provision will become due and payable as provided in the policy and in this provision.

The payment of a monthly income by reason of the total disability of the insured in accordance with this provision may be concurrent with or independent of the insured's right to receive total permanent disability benefits under the policy. Neither the payment of a monthly income under this provision nor the payment of total permanent disability benefits under the policy shall reduce the amount of the monthly income payment payable for total disability under this provision or the amount of the monthly installment payable for total permanent disability under the policy.

If the policy shall lapse, or be surrendered for a cash value or for extended insurance, or mature as an endowment, then this provision shall cease and no further premium will be payable. If the policy shall become paid up at the end of the premium-paying period, then this provision may be continued in force by the payment of monthly premiums as herein provided. If the policy be surrendered prior to the expiration of the premium-paying period for paid-up insurance in an amount of not less than $1,000, the insured may continue this provision in multiples of $500 by the payment of the required premiums as they become due. If the amount of paid-up insurance is less than $1,000, this provision shall cease, and no further premium will be payable.

The waiver of premiums and the payment of the monthly income, as herein provided, shall be in addition to all other benefits and privileges under the policy, including the participation in such dividends on the policy as may be determined by the Administrator of Veterans' Affairs.

This provision may be canceled by the insured at any time upon written request to the Veterans' Administration accompanied by the policy and this provision for endorsement. This provision shall terminate and be of no further force and effect if any premium on the policy or on this provision be not paid when due or within the grace period of 31 days thereafter. If a premium be not paid as stipulated, then this provision shall cease and terminate but may be reinstated upon evidence of good health satisfactory to the Administrator of Veterans' Affairs, and upon the payment of all premiums in arrears with interest at the rate of 5 percent per annum, compounded annually, to the first monthly premium due date after July 31, 1946, and thereafter at the rate of 4 percent per annum, compounded annually. If the application and the premiums with interest are submitted within 3 months after the due date of the premium in default, reinstatement may be effected upon evidence satisfactory to the Administrator showing the applicant to be in as good health as he was on the due date of the premium in default.

This provision is issued under authority of section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and is subject to the provisions of the World War Veterans' Act, 1924, as amended, and amendments and supplements thereto, and to the regulations of the Veterans' Administration now in force or hereafter published. The terms and conditions of the policy which are not contrary to or inconsistent with the terms and conditions of this provision are hereby expressly made a part of this provision.

This provision is issued in consideration of the application, evidence of good health, and the payment of a premium of _____ dollars and _____ cents in addition to the premium on the policy, said premium to be paid on the day and date this provision takes effect and on the same day of each month thereafter or within the grace period of 31 days.

This provision takes effect on the _____ day of _____ 19____.

ADMINISTRATOR OF VETERANS' AFFAIRS.

Countersigned at Washington, D. C.
Examined and issued _____ 19____.

_____ D. No. _____
(Registrar)

(Sec. 25, 46 Stat. 1002, Sec. 7, 50 Stat. 661; 38 U. S. C. 512b, 512c)

FIVE-YEAR LEVEL PREMIUM TERM PLAN

§ 6.170 *Renewal of United States Government life insurance on the 5-year level premium term plan.* Pursuant to the provisions of an amendment approved April 15, 1947, amending section 301 of the World War Veterans' Act of 1924, as amended (Pub. Law 34, 80th Cong., approved April 15, 1947), all or any part of United States Government life insurance on the 5-year level premium term plan, in any multiple of $500 and not less than $1,000 may be renewed without medical examination for a second, third, fourth, or fifth 5-year period upon application therefor and payment of the premium at the 5-year level premium term rate required at the attained age of the insured, before the expiration of the current 5-year period, except as provided below. The renewal of insurance for a second, third, fourth, or fifth 5-year period will become effective as of the day following the expiration of the preceding 5-year period, and the premium for such renewal will be at the 5-year level premium term rate for the attained age of the applicant on that day: *Provided,* That no insurance may be renewed under the amendment approved April 15, 1947, to section 301 of the World War Veterans' Act, 1924, as amended, by any person who has exercised his optional right to change to another plan of insurance. If the fourth 5-year period shall have expired between January 24, 1947, and September 15, 1947, and if all premiums have been paid for said period, the insurance may be renewed for another 5-year period upon application therefor and payment of the back premiums on or before September 15, 1947. The renewal of the insurance in accordance with the law and regulations will be evidenced by the following certificate:

UNITED STATES GOVERNMENT LIFE INSURANCE

CERTIFICATE OF RENEWAL

5-Year Level Premium Term Insurance

Policy number K-____ Monthly $_____
Age of insured_____. Quarterly $_____
Amount of insurance
$_____ Semiannual $_____
Name of insured_____ Annual $_____

Pursuant to the provisions of the amendment approved April 15, 1947, to section 301 of the World War Veterans' Act, 1924, as amended, and in consideration of the payment of the monthly premium at the rate for the attained age of insured in the amount as stated above on the day this certificate becomes effective and on the same day of each month thereafter for a period of 60 months, the insurance under said policy, of which this agreement becomes a part, is renewed as 5-year level premium term insurance for the period beginning _____, 19____, and ending _____, 19____.

The insurance renewed is subject to the conditions, benefits, and privileges contained in the policy except that any nonforfeiture provisions and any table of guaranteed surrender values of the policy shall be null and void. The insurance under this certificate ceases on the ending date shown above.

Effective as of _____, 19____.

CARL R. GRAY, Jr.,
Administrator of Veterans' Affairs.

Countersigned at Washington, D. C.
Examined and issued _____, 19____.

_____
(Registrar)

(Pub. Law 34, 80th Cong.)

§ 6.175 *Grace for payment of premiums; 5-year level premium term policy.* For the payment of any premium under a United States Government life insurance policy on the 5-year level premium term plan, a grace of 31 days without interest will be allowed, during which time the policy will remain in force, but, if the policy shall become a claim within the grace period, the unpaid premiums shall be deducted from the amount of insurance payable. A 5-year level premium term policy shall cease and become void at the end of the 60-month period.

§ 6.176 *Reinstatement; 5-year level premium term policy.* A United States Government life insurance policy on the 5-year level premium term plan may be reinstated at any time after lapse and within the 60-month period upon evidence of the insurability of the insured satisfactory to the Administrator of Veterans' Affairs and upon the payment of all premiums in arrears, with interest from their several due dates at the rate of 5 percent per annum, and the payment of any indebtedness which existed at the time of such default, with interest at the rate of 6 percent per annum.

§ 6.177 *Dividends; 5-year level premium term policy.* A United States Government life insurance policy on the 5-year level premium term plan shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans' Affairs. Any dividends so apportioned shall be paid in cash.

§ 6.178 *Indebtedness at maturity of policy; 5-year level premium term policy.* At the maturity of a United States Government life insurance policy on the 5-year level premium term plan by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the commuted value of monthly installments, as may then be payable under the policy. If the policy is payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.

§ 6.179 *Recovery from disability; 5-year level premium term policy.* Notwithstanding proof of total permanent disability may have been accepted as satisfactory, the insured under a United States Government life insurance policy on the 5-year level premium term plan shall at any time, on demand, furnish proof satisfactory to the Administrator of Veterans' Affairs of the continuance of such total permanent disability. If the insured shall fail to furnish such proof, all payments of monthly installments on account of such total permanent disability shall cease, and all premiums thereafter falling due shall be payable in conformity with the 5-year level premium term policy. Thereafter the premium to be paid shall be reduced so that the resulting premium shall bear the same proportion to the premium specified on the policy that the commuted value of the installments (240 less the number paid) bears to the commuted value of 240 installments. If recovery from total permanent disability takes place after the expiration of the term period, the insurance may be continued in accordance with § 6.180.

§ 6.180 *Continuance of insurance after termination of total and permanent rating and award, where such termination is effective after the expiration of the term period.* If United States Government life insurance on the 5-year level premium term plan (or on the 5-year convertible term plan) matures or has matured by reason of total and permanent disability and the insured recovers from such disability after expiration of the term period, the reduced amount of insurance (commuted value of remaining unpaid installments) or any part thereof in multiples of $500 and not less than $1,000 may be continued without medical examination on the level premium term plan or on any permanent plan, as the insured may elect, and subject to the following provisions:

(a) Such insurance may be renewed for a second, third, fourth, or fifth term period, depending upon the number of 5-year term periods which have elapsed since the insurance was originally issued. Upon application for renewal and payment of premiums at the rate required for the attained age of the insured on the policy anniversary renewal date for the current 5-year period, a certificate of renewal will be issued effective on the policy anniversary renewal date.

(b) Such insurance may be converted to any of the permanent plans upon application therefor and payment of premiums at the rate required for the then attained age, and a policy will be issued to the insured effective as of the date on which the first premium became payable.

(c) There will be no insurance in force unless and until the first premium is paid. The first premium on the reduced amount of insurance for the plan selected is payable on the 1st day of the month following the month for which the last installment under the total and permanent disability rating was paid to the insured, but may be paid within 31 days from the date of notice advising of the amount of insurance and the monthly premium rate. Thereafter, subsequent premiums will be payable in accordance with the terms and conditions of the policy.

§ 6.181 *Grace period for payment of first premium payable on United States Government life insurance and total disability insurance after termination of a total and permanent disability insurance award and a total disability insurance award.* United States Government life insurance and total disability insurance shall not lapse during the period between the termination of a total and permanent disability insurance award or the termination of a total disability insurance award and 31 days from the due date of the first premium payable after such termination or 31 days from date of receipt of notice at the insured's last address of record advising of the termination of the award and the amount and due date of the first premium so payable, whichever is the later date. If the premium or premiums be not paid within said 31 days, the insurance policy and the total disability provision shall lapse in accordance with the terms and conditions thereof and shall otherwise be subject to the terms and conditions of said policy and provision. A letter by registered mail with return receipt requested will be mailed to the insured at his last address of record advising of the due date of the first premium payable after termination of the award, and of the amount of insurance, and the amount due as premiums. The receipt of such letter at the insured's last address of record will be sufficient notice within the provisions of this regulation, and the failure of the insured to furnish a correct current address at which mail will reach him promptly shall not be grounds for an extension of time under this paragraph.

DETERMINATION OF LIABILITY UNDER SECTION 302, WORLD WAR VETERANS ACT, 1924, AND UNDER SECTION 607, NATIONAL SERVICE LIFE INSURANCE ACT, 1940

§ 6.190 *Establishment of committee on extra hazards of service.* There is hereby established in the insurance service, central office, a committee on extra hazards of service (section 302, World War Veterans' Act, 1924, and section 607, National Service Life Insurance Act, 1940), hereafter referred to as the committee, which will be in charge of a chairman who shall be responsible to the director of insurance for the proper functioning of such committee. The committee shall be composed of the chairman and such regular members, alternate members and other personnel as may be found necessary for the purpose of executing the duties and functions

assigned thereto. (Sec. 302, 43 Stat. 625, sec. 607, 54 Stat. 1012; 38 U. S. C. 513, 807)

§ 6.191 *Jurisdiction of the committee.* The committee is vested with exclusive jurisdiction in determining liability under section 302, World War Veterans' Act, 1924, and under section 607, National Service Life Insurance Act, 1940. (Sec. 302, 43 Stat. 625, sec. 607, 54 Stat. 1012; 38 U. S. C. 513, 807)

§ 6.192 *Definition of "disease or injury traceable to the extra hazard of the military or naval services".* In cases wherein, pursuant to the provisions of the War Risk Insurance Act and the amendments thereto or of the World War Veterans' Act and the amendments thereto, a determination has been made that a disease or injury has been suffered or contracted in the active military or naval service during the World War, and notwithstanding such disease or injury the insured has been permitted under the provisions of said War Risk Insurance Act or of said World War Veterans' Act to reinstate or to convert insurance into United States Government life insurance, the subsequent death or total permanent disability of the insured, if found to be traceable to the said disease or injury, shall, for the purpose of determining liability under section 302 of the World War Veterans' Act, be held to be the result of disease or injury traceable to the extra hazard of the military or naval service.

In other cases, disease or injury may be found to be traceable to the extra hazard of the military or naval service when it appears from the evidence that the said disease or injury was in fact caused by or is traceable to, the performance of duty in the military or naval service.

INSURANCE CLAIMS COUNCIL

§ 6.200 *Establishment of insurance claims council.* There is hereby established in the insurance service, central office, an insurance claims council which will be in charge of a chief who shall be responsible to the director of insurance for the proper functioning of such council. The council shall be composed of such other personnel as may be found necessary for the purpose of carrying on the duties and functions assigned thereto.

§ 6.201 *Duties of the insurance claims council.* (a) The insurance claims council is vested with original and, except where there is filed within the time limit an application for review on appeal to the Administrator of Veterans' Affairs (see § 6.204), final jurisdiction in determining total and permanent disability for the purpose of automatic insurance, United States Government life insurance, and yearly renewable term insurance.

(b) The insurance claims council is vested with original and, except where there is filed within the time limit an application for review on appeal to the Administrator of Veterans' Affairs (see § 6.204), final jurisdiction in determining total disability as provided by the total disability provision attached to a United States Government life insurance policy.

(c) The insurance claims council is vested with original and, except where there is filed within the time limit an application for review on appeal to the Administrator of Veterans' Affairs (see § 6.204), final jurisdiction in rendering decisions terminating total and permanent disability and total disability for insurance purposes, whether such total and permanent disability had been determined by the Veterans' Administration or by judgment of a court.

(d) In rendering decisions as to the existence or non-existence of total and permanent disability as provided in an insurance contract, or total disability as provided in a total disability provision of an insurance contract, the insurance claims council will be governed by the definition in effect and applicable to the contract of insurance or to the total disability provision upon which the claim is based.

(e) The insurance claims council is authorized to determine the acceptability of applicants insofar as their mental and physical conditions are concerned, for insurance under sections 310 and 311 or either, of the World War Veterans' Act, 1924, as amended, and section 602, National Service Life Insurance Act of 1940, and of all applicants for reinstatement of lapsed insurance, and under all circumstances to make such determination as may be necessary for insurance purposes. The insurance claims council is also authorized to select and designate qualified physicians in such localities in the United States as may be necessary for the purpose of examining such applicants.

(f) The insurance claims council is authorized to determine the need for reexaminations for the purpose of ascertaining whether the insured has recovered his ability to continuously follow a substantially gainful occupation after an award has been made for permanent and total disability or total disability benefits for insurance; and the council is further authorized to request medical examinations, social survey reports, investigations and reports of industrial history for that purpose.

(g) The insurance claims council is vested with jurisdiction concurrent with rating agencies to determine, in connection with any insurance claim, the question of competency or incompetency of the insured subject to the provisions of Veterans' Administration medical procedures.

(h) Subject to the provisions of Veterans' Administration medical procedures and § 3.173 of this chapter, the insurance claims council is vested with jurisdiction to determine the question of mental incompetency for the purpose of determining whether payment of premiums on insurance may be waived under the provisions of section 306, World War Veterans' Act, 1924, as amended, where compensation, pension or emergency officers retirement pay is not currently being paid by reason of military or naval service.

(i) Subject to the provisions of §§ 8.0 to 8.69 of this chapter, the insurance claims council is vested with jurisdiction to determine the existence of total disability in connection with waiver of premiums under section 602 (n), National Service Life Insurance Act of 1940, and is authorized to require the reexamination of persons who have been granted waiver of premiums whenever such reexamination is considered necessary by the insurance claims council.

§ 6.202 *Claim for disability benefits under insurance.* A claim for permanent and total disability benefits under a contract of insurance is any writing which alleges permanent and total disability at a time when the contract was in force or which uses words showing an intention to claim permanent and total disability insurance benefits. However, the claimant may be required to furnish a statement in support of his claim on forms provided by the Veterans' Administration, and such additional information concerning his industrial activities and physical and mental condition as may be required by the Veterans' Administration. (Sec. 4, 46 Stat. 992; 38 U. S. C. 445)

§ 6.203 *Effective dates in decision by insurance claims council.* If the insurance claims council determines total and permanent disability to exist for the purpose of automatic insurance, yearly renewable term insurance, or United States Government life insurance, or finds total disability to exist for the purpose of a total disability provision of the insurance contract, such decision will include the date on which such disability began, and, in cases involving United States Government life insurance or the total disability provision, the decision will include the date of receipt of due proof.

§ 6.204 *Appeal from decision by insurance claims council.* Where the insurance claims council finds that total disability or permanent and total disability does not exist as alleged, such denial shall be final. However, a veteran or his authorized representative shall have the right to file an application for review on appeal to the Administrator of Veterans' Affairs within one year from the date of mailing of notice of the decision of the insurance claims council. Any new and material evidence must be submitted within a period of one year or prior to the consideration of the appeal. Such appeal must be in writing and otherwise comply with the regulations governing apeals to the Administrator. An application for review on appeal filed with the activity which entered the denial which is postmarked prior to the expiration of the one year period will be accepted as having been filed within the time limit.

§ 6.205 *Ratings for insurance benefits not applicable for pension or disability compensation.* Since decisions of the insurance claims council determining the existence or non-existence of total, or total permanent disability for insurance purposes and decisions of rating agencies determining the existence or the non-existence of total, or total permanent disability for pension or compensation purposes are based upon distinctly dissimilar standards, it follows that the former cannot be determinative for pension or compensation purposes and the latter cannot be determinative for insurance purposes.

PART 7—SOLDIERS' AND SAILORS' CIVIL RELIEF

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1942

AUTHORITY: §§ 7.0 to 7.34 issued under secs. 400–408, 54 Stat. 1183–1186, 56 Stat. 778; 50 App. U. S. C. 540–548.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

§ 7.0 *Form of application for benefits.* In accordance with the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, the form of application for benefits to be executed by the insured while in the active military service, who is the owner and holder of a policy of life insurance, or by a person designated by the insured, or by a beneficiary if the insured is outside the continental United States, Alaska and the Panama Canal Zone, is hereby prescribed as follows:

Form approved
Budget Bureau No. 76–R006.1

Veterans' Administration Insurance Form 380
Revised February 1943

APPLICATION FOR BENEFITS

Soldiers' and Sailors' Civil Relief Act Amendments of 1942

Use an application (and copy) for each insurance policy, or certificate of membership, to be brought under the provisions of the act.

Send this application to the insurance company, association, or society.

Send copy of application to the Veterans' Administration, Washington, D. C.

To _____
(Name of insurance company, association, or society, etc.)
Address _____
(Principal place of business or office where premiums are paid)
Face amount of insurance $_____
Effective date of insurance _____
Policy number _____

The insured under the above identified policy issued by the above named insurer, hereby makes application to have said policy protected in accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, and to that end agrees to such modifications of the terms of the policy as may be required to give the act full force and effect with respect to such policy. The insured further agrees that the United States shall be protected in the amount of any premiums and interest guaranteed on the above numbered policy. Any amount paid by the United States to the insurer on account of this policy will become a debt due the United States to be collected by deduction from any amount due the insured by the United States or as otherwise authorized by law.

1. Name of insured _____
(First) (Middle) (Last)
2. Home address _____
Address to which premium notices are sent _____
3. Date of birth ____ 4. Place of birth ____
5. Date of last entrance into active service _____
6. Identification number _____
Branch of service: Army ___ Navy ___
Marine Corps _____ Coast Guard _____
7. Due date of last premium paid on policy _____
8. Name and address of office or person to whom paid _____
9. Next premium will be due and payable on _____
10. For period of _____
(State whether weekly, monthly, quarterly, semiannually or annually)
11. Is there any indebtedness on this policy due the insurer? Answer ("Yes" or "No") _____. If "Yes," give date of last loan _____, and amount $_____, to the best of your information and belief.
12. Is the policy pledged or assigned to any person, firm, corporation, etc., other than the insurer, as security for an indebtedness? Answer ("Yes" or "No") _____. If "Yes," give the date _____, amount $_____, and name and address of assignee.
13. Give the name and address of person, firm, corporation, etc., who is now in possession of the policy.
14. Have you made a similar application to have another policy (or policies) protected by the provisions of the Act? Answer "Yes" or "No" _____. If "Yes," give the following information about each policy.
Name of insurer _____
Amount of insurance _____

Application by the insured must be witnessed by the insured's Commanding Officer, or by a commissioned officer of equal or higher rank than the insured. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record.

The undersigned witnessing officer does hereby certify that the insured is on active duty in the military service of the United States.

Signed at _____ this _____ 194___.

_____
(Signature of witnessing officer)
_____ _____
(Rank) (Organization)
_____
(Signature of insured)
_____ _____
(Rank) (Organization)

If this application is made by a person designated by the insured or by a beneficiary if the insured is outside the continental United States, Alaska and the Panama Canal Zone, it must be signed both in the name of the insured and by the agent or the beneficiary in his own name. When application is made by person designated by the insured, the instrument or other writing authorizing such action must be attached to the application executed by the agent.

Evidence that the insured is in the military service will be procured by the Veterans' Administration.

§ 7.1 *Form of report by insurer.* In accordance with the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, a report by the insurer of the receipt and filing of an application for benefits made by the insured will be executed and delivered to the Veterans' Administration in form and substance as follows:

Veterans' Administration Insurance Form 381
Revised February 1943

REPORT BY INSURER

Soldiers' and Sailors' Civil Relief Act Amendments of 1942

A report on each policy will be made by the insurer to the Veterans' Administration, Insurance Service, Washington, D. C., immediately upon receipt of an application from the insured.

From: _____
Name and address of company: _____
To: Veterans' Administration, Insurance Service, Washington, D. C.

The insurer hereby reports the receipt of an application from insured for protection of his policy under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

1. Date of insured's application: _____
2. Date received by insurer: _____
3. Policy No. _____
4. Name of insured: _____
5. Home address: _____
6. Effective date of insurance: _____
7. Face amount of insurance, $_____
8. Date of birth: _____
9. Place of birth: _____
10. Plan of insurance: _____
11. Age at issue: _____
12. Amount of annual premium: $_____
13. Due date of last premium paid on policy: _____
14. Due date of first premium to be protected under Article IV: _____
15. If application for insurance was signed subsequent to October 6, 1942, give the date on which contract was made and first premium paid: _____
16. Furnish statement of the cash surrender value on the basis of a policy free of indebtedness, as of the due date of the first premium to be guaranteed. If the cash surrender value includes an amount other than the published cash or loan value of the policy, itemize amounts.
17. Furnish statement of all indebtedness, if any, due the insurer under this policy, with interest calculated to the due date of the first premium to be guaranteed. Itemize amounts.
18. What rate of interest is provided by the policy for policy loans? _____%.
19. If it appears that the policy has been assigned to a person, firm, or corporation other than the insurer, give a statement of the facts as shown by the records of your office.
20. Does the policy, application for insurance, certificate of membership, constitution, by-laws or other governing rules and regulations of the insurer contain any provision regarding service by the insured with the military or naval forces of the United States, travel or residence in the tropics or in foreign countries; or any restriction or limitation of coverage in event the insured engages in aviation, submarine service or any other specified hazardous duty, occupation, or activity? (A) As to primary death benefit (Answer "Yes" or "No") _____. (B) As to any benefits in addition to the primary death benefit (Answer "Yes" or "No") _____. If

"Yes" as to either, attach hereto a copy of the provision unless a copy has already been furnished to the Veterans' Administration.

21. Is the premium on this policy (exclusive of any benefits in addition to the primary death benefit) at the standard rate as published by the insurer? (Answer "Yes" or "No") _____. If "No," give facts about the additional premium: _____

22. What information does the insurer have about present whereabouts of policy?_____

23. Name of beneficiary as shown on records at home office of insurer at this time.

The insurer hereby certifies the above to be a correct statement regarding the policy as shown on the records at its principal office or place where such records are maintained.

It is understood and agreed that before any dividend is paid or any loan or settlement of any kind or character is made by the insurer while the policy is under the protection of the Act the written consent of the Veterans' Administration will be obtained.

Under section 402 of the Act Amendments of 1942 the insurer is deemed to have agreed to such modification of the policy as may be required to give the Act full force and effect with respect to such policy.

Signed at this _____ 19____.

_____
(Name of company, association, or organization)

By _____
(Name and official capacity)

§ 7.2 *Form of certificate.*

Veterans' Administration Insurance Form 388

THE UNITED STATES OF AMERICA

Certificate Issued Under Authority of Article IV, Section 407, of the Soldiers' and Sailors' Civil Relief Act of 1940

Issued to _____ the insurer, in the amount _____ dollars, bearing interest at the rate of three per centum per annum from the effective date of this Certificate.

This Certificate representing premiums on policies entered on the monthly difference report for the month of issue, shall be redeemable by the United States of America subject to the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress, 3d Session).

This Certificate shall not be transferred except with the approval of the Administrator of Veterans' Affairs, and shall remain with the insurer until settlement is made in accordance with the Act.

Issued in the City of Washington, District of Columbia, effective as of the _____ day of _____ 194__.

_____
Administrator of Veterans' Affairs.

Recorded under number _____ on this _____ 194__.

_____
Registrar.

§ 7.3 *The insured.* The term "insured" includes any person on active duty with the military and naval forces of the United States (including Coast Guard service) who is the insured under, and the owner of, a policy as hereinafter defined. The term "holder" shall mean the insured under a policy who has an interest in the policy.

(a) The phrase "persons in military service" as used in section 401 and amplified by the definition of the term "persons in military service," and the term "period of military service", in section 101, (1) and (2), Article I, shall include any person certified by the War Department, the Navy Department, or the Coast Guard Service as being on active duty with the land and naval forces of the United States. A statement over the signature of the commanding officer or a commissioned officer of equal or higher rank than the insured, on the application by the insured, may be accepted as a certification. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record. (See § 7.8 (a).)

§ 7.4 *The policy.* The term "policy" includes any contract of life insurance on the level premium or legal reserve plan, and any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, on which a premium was paid before date of approval of the act or not less than thirty days before entry on active duty, and is not void or voidable by reason of military service (including any limitation or restriction upon the insured's engaging in or pursuing certain types of activities which a person might be required to engage in by virtue of his being in the military service). Policies of United States Government life insurance and National Service Life Insurance are not included within the provisions of the act.

(a) The provisions of the act shall not apply to a policy which would be void or voidable on account of the military or naval service of the insured; nor to a policy under which the death benefit would not be payable or the amount of the death benefit would be reduced in event of death while in the military or naval service. Any provision in a policy that may limit or eliminate a benefit other than the death benefit, shall not, because of such provision, place the policy outside the protection of the act if the death benefit under the policy is not altered in any way by the fact that the insured is in the military or naval service. A policy that requires the payment of an additional amount as premium by reason of the fact that the insured is in the military or naval service, such premium to be paid only by those in such service, will not be entitled to the protection afforded by the act.

(b) A policy may not be brought under the protection of the act if it is subject to a loan or other indebtedness equal to or greater than fifty per centum of the cash surrender value.

(c) The provisions of the act are not applicable to insurance in excess of five thousand dollars on the life of one insured, and a policy (or policies) for a face value exceeding that amount will be divided at the request of the Veterans Administration; however, this shall not delay insurance of the face value of $5,000 from receiving the protection afforded policies under the act, because of administrative procedure or any difficulties encountered in procuring possession of an outstanding policy. If applications are made by an insured on policies exceeding a face value of $5,000 (one or more policies with one or more insurers), without indicating a preference, the Veterans Administration will reject the policy (or policies) having the lesser cash surrender value, and may direct an insurer to divide the insurance into two policies.

(d) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the act if otherwise eligible. Group insurance carried through or by the means of an association, will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the act as a policy.

(e) The term "face value" will mean the amount of insurance payable only as a death benefit as stated on the face of the policy, or if not so stated it will mean the commuted value of the installments payable as a death benefit, calculated in accordance with the terms of the policy, on the hypothesis of the death of insured as of the date of application for protection under this act: *Provided*, That any indebtedness, or any extra benefits (such as double indemnity, paid-up additions, etc.,) that may be added to or taken from the amount payable as the death benefit, will not be used in calculating the face value of a policy.

§ 7.5 *The premium.* The term "premium" includes the amount specified in the policy to be paid by the insured at regular intervals, and membership dues or assessments in an association.

(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3½ per centum, subject to approval by the Veterans' Administration.

(b) The automatic loan provision or other such benefit in a policy shall not operate to avoid the provisions of the act in relation to any premium that became payable not more than thirty-one days prior to date of application, and thereafter while policy is protected by the provisions of the act.

(c) The phrase "contracts of insurance in force under their terms" as used in section 402 will mean a policy in force under premium paying conditions at time of application by the insured, or on which a premium is not more than thirty-one days in arrears: *Provided*, A policy on which premiums are due and unpaid for a period of not more than one year, at the time of application, if reinstated by the insurer and placed in force under premium paying conditions, may be brought within the provisions of the act if otherwise eligible.

§ 7.6 *The insurer.* The term "insurer" includes any corporation, partnership, or other form of association which secures or provides insurance under a policy, and is required by law to maintain a reserve, or has made provision for collecting from all persons insured a premium to cover the special war risk of those in the military service.

(a) The provisions of section 414 will apply only to insurance companies or associations which are authorized by the laws of the United States or any State thereof, to grant and issue a policy and

are subject to the jurisdiction of the Courts of the several States and the United States.

§ 7.7 *Calculation of values.* (a) The term "cash surrender value" as used in section 402 shall be that amount which the insured would have been entitled to receive, on a policy free of indebtedness, upon complete surrender of all rights under the policy as of the date of application for benefits of the act.

(b) The term "cash surrender value" as used in section 410 and section 411 will include dividend accumulations, the value of any paid-up additions, and other amounts that would have been available to the insured upon complete surrender of all rights under the policy.

(c) The term "indebtedness" will include any loan, lien, or other obligation under the policy due by the insured that would be deducted by the insurer at the time of making settlement under the policy as a death claim.

(d) The use of the terms "interest" and "rate of interest" will follow the usual practice and procedure of the insurer but the rate of interest shall not exceed the rate fixed for policy loans. If no rate of interest on indebtedness is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the act was issued. Any rate of interest not specifically fixed in the policy will be subject to approval by the Veterans' Administration.

§ 7.8 *Application.* The provisions of the act will be available only upon application as to each policy made by the insured on a form prescribed by the Veterans' Administration. The form will set forth that the application therein made is a consent by the insured to such modifications of the terms of the contract of insurance as are made necessary by the provisions of the act, and the insurer by receiving and filing the application, shall be deemed to have assented thereto to the extent to which the policy is within the provisions of the act.

(a) The form of application for benefits as prescribed by regulations will be identified as Veterans' Administration Insurance Form 380. A separate form of application will be made by the insured for each policy to be brought under the provisions of the act. An informal application will be supplemented by an application on the prescribed form. The original of the application for benefits will be mailed or delivered by the insured to the insurer at its principal office or to the office or agency to which the last premiums on the policy have been paid. The copy of the application for benefits will be mailed or delivered by the insured to the Veterans' Administration, Insurance Service, Washington, D. C.

(b) When an application for benefits is received by an insurer, a report thereof will be made within thirty days to the Veterans' Administration, Insurance Service, Washington, D. C., on the form prescribed by regulations for that purpose and identified as Veterans' Administration Insurance Form 381. The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the act.

(c) Upon receipt of a report from the insurer on Form 381, the director of insurance will determine if the policy is entitled to the protection of the act, and the insurer and the insured will be notified of the decision.

§ 7.9 *Benefits.* Any policy which has been brought within the provisions of the act shall not lapse or be forfeited for the nonpayment of a premium during the period of military service of the insured or one year after the expiration thereof, but this guarantee shall not extend for more than one year after the date when this act ceases to be in force.

(a) For the period during which a policy is protected by the provisions of the act, any dividends, return of premiums, or other such monetary benefits arising out of the contract or by reason thereof, will be held subject to disposal or to be applied as may be approved by the Veterans' Administration.

(b) A policy shall not be removed from the protection of the act by reason of a payment made to the insurer by or on behalf of the insured, but any tender of a premium (in whole or in part) shall be applied on the indebtedness established under authority of the act against the policy, and entered as a credit in the monthly difference report.

§ 7.10 *Indemnity.* The United States shall have a first lien upon any policy receiving the benefits of the act, subject only to any prior lien and no loan or settlement or payment of dividend may be made by the insurer which will prejudice the security of the Government's lien. Before any dividend is paid or any loan or settlement of any kind or character is made on a policy while protected by the provisions of the act, the written consent of the Veterans' Administration must be obtained.

§ 7.11 *Monthly difference report by insurer.* The form of the monthly difference report will be identified as Veterans' Administration Insurance Form 382, and will be rendered within fifteen days after the end of each calendar month. This form will be completed in accordance with instructions contained therein.

§ 7.12 *Certificate.* Upon audit and approval of a monthly difference report (Form 382), the Administrator of Veterans' Affairs will issue to and in the name of the insurer, a certificate of indebtedness for an amount sufficient to cover the Government's obligation as shown by said report. Said certificate will be issued effective as of the first day of the month following the month covered by the report and will bear interest at the rate of three per centum per annum.

§ 7.13 *Maturity.* In the event a policy protected by the provisions of the act is terminated by death of the insured, the amount of any unpaid premiums, with interest at the rate provided for policy loans, shall be deducted from the proceeds of the policy, and shall be included in the next monthly difference report of the insurer as premiums paid.

(a) The phrase "shall be terminated by death" will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(b) If a policy matures as a death claim, or protection under the act is otherwise terminated before expiration of the period fixed by the act, the insurer will immediately notify the Veterans' Administration and will make a complete statement of the account on that particular policy. After audit and approval of the account by the director of insurance, the amount of indebtedness collected by the insurer will be entered as a credit in the monthly difference report. If a policy is not removed from the protection of the act prior to expiration of the period fixed by the act, at that time the insurer shall submit to the Veterans' Administration a statement of account in detail on that particular policy, showing the Government's obligation and the credits, if any, then available. If there is a balance due by the Government to the insurer, a settlement in favor of the insurer will be certified. However, before such settlement is made with an insurer covering the policies on a monthly difference report, or if all policies on a report are released from operations of this act, then the director of insurance shall demand return of the certificate issued to cover the amount of said report.

§ 7.14 *Settlement.* If within one year after the termination of his period of military service the insured does not pay to the insurer all past due premiums with interest at the rate provided for policy loans, the policy shall immediately lapse and become void, and the insurer shall thereupon become liable to the Government for the cash surrender value of the policy: *Provided,* That if the insured is in the military service when the act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when the act ceases to be in force.

§ 7.15 *Beneficiary or assignee.* In administering the provisions of Article IV of the act, all matters pertaining thereto shall be confined to the interest of the insured, the insurer, and the Government; therefore, it will not be necessary to procure the consent of a beneficiary, or an assignee, or any person, who may have a right or interest, either vested or inchoate, in the proceeds of the policy, as a prerequisite to bringing a policy within the provisions of the article.

§ 7.16 *Termination.* Section 604 provides that the act shall remain in force until May 15, 1945: *Provided,* That should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter.

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§ 7.20 *The insured.* The term "insured" includes any person on active duty with the military and naval forces of the United States (including Coast Guard) and any member of the Women's Army Auxiliary Corps, whose life is insured under and who is the owner and holder of and has an interest in a policy as hereinafter defined.

(a) The phrase "person in military service" as used in section 400 (c) is defined in section 101, Article I of the act approved October 17, 1940, as amended by section 19 of Public 554, approved May 14, 1942, to be any member of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy and any member of the Women's Army Auxiliary Corps, and the term "military service" as hereinafter used shall mean service in the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard and the Women's Army Auxiliary Corps. A statement over the signature of the Commanding Officer or a commissioned officer of equal or higher rank than the insured, on the application by the insured, may be accepted as a certification that the insured is a person in the military service. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record. If application is made by a person designated by the insured, or is made by the beneficiary, evidence that the insured is a person in the military service will be procured by the Veterans' Administration from the service department.

§ 7.21 *The policy.* The term "policy" includes any contract of life insurance on a life or endowment or term plan, and any benefit contract in the nature of life insurance arising out of membership in any fraternal or beneficial association, which was made and on which a premium was paid before date of approval of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942), or not less than thirty days before the date the insured entered into the military service. A policy is not eligible for protection under the act if it contains any provision excluding or restricting liability for death arising from or in connection with military service, or any activity which the insured may be called upon to perform in connection with his military service, or requires the payment of an additional premium because of military service. The provisions of the act are not applicable to policies of United States Government life insurance and National Service life insurance.

(a) Any provision in a policy that may limit or eliminate a benefit other than the primary death benefit will not, because of such provision, place the policy outside the protection of the act if it is otherwise eligible for protection.

(b) A policy must be in force on a premium paying basis at the time of application for benefits under the act.

(c) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the act if otherwise eligible. Group insurance will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the act as a policy.

(d) The phrase "Face amount of insurance" as used in the regulations in this part will mean the amount of insurance payable as a death benefit and if a policy provides for instalment payments as a death benefit they will be calculated in accordance with the terms of the policy on the hypothesis of the death of the insured on the due date of the first premium to be guaranteed by the Government: *Provided*, That any indebtedness, or any accruals (such as paid-up additions, dividend accumulations, etc.) that may be added to or taken from the amount payable as the death benefits will not be used in calculating the face amount of a policy.

§ 7.22 *The premium.* The term "premium" includes the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated, and membership dues and assessments in an association.

(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3½ percentum, subject to approval by the Veterans' Administration.

(b) Premiums will not be guaranteed for any additional death benefit insurance which together with the amount of the primary death benefit would result in a payment in excess of $10,000 in the event of death of the insured, nor will premiums be guaranteed for benefits additional to the primary death benefit if liability for such additional benefits is excluded or restricted by military service or any activity which the insured may be called upon to perform in connection with his military service: *Provided*, That in the event the premiums for primary and additional benefits are not separable under the terms of the policy the entire premium will be guaranteed if the policy is otherwise eligible for protection under the law.

(c) An automatic loan provision or other such benefit in a policy shall not be operative during the period of protection under the act to avoid the provisions of the act in relation to any premium that became payable not more than thirty-one days prior to date of application, and thereafter while the policy is protected by the provisions of the act.

§ 7.23 *The insurer.* The term "insurer" includes any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy by the laws of a State of the United States or the United States and is subject to the jurisdiction of the courts of the several States or the United States.

§ 7.24 *Amount of insurance.* The provisions of the act are not applicable to insurance in excess of ten thousand dollars on the life of one insured, and a policy (or policies) which provides insurance in excess of that amount will be divided at the request of the Veterans' Administration; however, this shall not delay insurance in the amount of ten thousand dollars from receiving the protection afforded policies under the act because of administrative procedure or any difficulties encountered in procuring possession of an outstanding policy. If applications are made by an insured on policies for an amount exceeding ten thousands dollars (one or more policies with one or more insurers), without indicating a preference, the policy which affords the best security to the Government will be given preference by the Veterans' Administration.

§ 7.25 *Calculation of values.* (a) The term "cash surrender value" shall include any dividend accumulations, the value of any paid-up additions, and any other amounts available as a credit under the policy less the indebtedness with interest accumulations to the day on which the policy ceases to be under the protection of the act.

(b) The term "indebtedness" will include any loan, lien, or other obligation under the policy due by the insured that would be deducted by the insurer at the time of making settlement under the policy.

(c) The use of the terms "interest" and "rate of interest" will follow the usual practice and procedure of the insurer but the rate of interest shall not exceed the rate fixed for policy loans. If no rate of interest on indebtedness is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the act was issued. Any rate of interest not specifically fixed in the policy will be subject to approval by the Veterans' Administration.

§ 7.26 *Application.* (a) The benefits of the act are not available except upon application by the insured or by a person designated by the insured or by the beneficiary if the insured is outside the continental United States (not including Alaska and the Panama Canal Zone). Any writing signed by the insured designating a person, firm, or corporation to make application for benefits under the act shall be sufficient authority for the making of such application for the insured by such agent. When application is made by person designated by the insured, the instrument or other writing authorizing such action must be attached to the application executed by the agent. The form will set forth that the application therein made is a consent by the insured to such modifications of the terms of the contract of insurance as are made necessary by the provisions of the act. The insured and the insurer will execute such other forms as may be advisable and will furnish such reports concerning the policy as may be deemed necessary. The insurer will be deemed to have agreed to

such modifications of the policy as may be required to give the act full force and effect with respect to such policy.

(b) The form of application for benefits as prescribed by regulations will be identified as Veterans' Administration Insurance Form 380. An informal application will be supplemented by an application on the prescribed form. The original of the application for benefits will be mailed or delivered to the insurer at its principal office or to the office or agency to which the last premium on the policy has been paid. The copy of the application for benefits will be mailed or delivered to the Veterans' Administration at Washington, D. C.

(c) When an application for benefits is received by an insurer, a report thereof will be made within thirty days to the Veterans' Administration at Washington, D. C., on the form prescribed for that purpose and identified as Veterans' Administration Insurance Form 381. The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the act.

(d) Upon receipt of a report from the insurer on Insurance Form 381, the director of insurance will determine if the policy is entitled to the protection of the act, and the insurer and the insured will be notified of the decision.

§ 7.27 *Benefits.* Any policy found to be entitled to protection under the provisions of the act will not lapse or otherwise terminate or be forfeited for the nonpayment of a premium or the nonpayment of any indebtedness or interest during the period of military service of the insured and two years after the expiration of such service, but this guarantee will not extend for more than two years after the date when the act ceases to be in force.

(a) For the period during which a policy is protected by the provisions of the act, any dividends, return of premiums, or other such monetary benefits arising out of the contract or by reason thereof, will be held subject to disposal or to be applied as may be approved by the Veterans' Administration.

(b) A policy will not be removed from the protection of the act by reason of a payment made to the insurer by or on behalf of the insured, but any tender of a premium (in whole or in part) shall be applied on the indebtedness established under authority of the act against the policy: *Provided,* That nothing herein shall prevent an insured from continuing payment to the insurer of premiums to cover any additional benefits (such as double indemnity, waiver of premium, etc.) where such premiums may not be included in the amount guaranteed by the Government.

§ 7.28 *Indemnity.* The United States shall have a lien upon any policy receiving the benefits of the act, subject only to any prior lien and no loan or settlement or payment of dividend may be made by the insurer which will prejudice the security of the Government's lien. Before any dividend is paid or any loan or settlement of any kind or character is made with the insured on a policy while protected by the provisions of the act, the written consent of the Veterans' Administration must be obtained.

§ 7.29 *Maturity.* (a) If a policy protected by the provisions of the act is terminated by death of the insured, the amount of any unpaid premiums, with interest at the rate provided for policy loans, will be deducted from the proceeds of the policy, and will be reported by the insurer to the Veterans' Administration.

(b) The phrase "maturity of a policy as a death claim or otherwise" (section 405, Soldiers' and Sailors' Civil Relief Act Amendments of 1942), will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(c) If a policy matures as a claim, except a death claim, or if protection under the act is otherwise terminated before expiration of the period fixed by the act, the amount of any unpaid premiums, with interest at the rate provided for policy loans, will be deducted and the insurer will immediately notify the Veterans' Administration and will make a complete statement of the account as to that particular policy.

(d) If a policy is not removed from the protection of the act prior to the expiration of the period of protection, at that time the insurer will submit to the Veterans' Administration a complete statement of the account as to that particular policy.

(e) The statement of account will show the amount of indebtedness by reason of the premiums with interest and the credits, if any, then available and will be subject to audit and approval by the director of insurance. The statement of account will include the rate of interest charged on all indebtedness, the dates of debit and credit entries, and such other information as may be deemed necessary in making an audit of the account. If there is a balance due by the United States to the insurer, payment in favor of the insurer will be certified.

§ 7.30 *Settlement.* The payment of premiums and interest thereon at the rate fixed in the policy for policy loans while the policy is protected under the provisions of the act is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of protection the amount then due will be treated by the insurer as a loan on the policy. However, if at the expiration of the period of protection the cash surrender value of the policy is less than the amount guaranteed, the policy shall cease and terminate and the United States will pay to the insurer the difference between the cash surrender value of the policy and the amount guaranteed. If the insured is in the military service when the act ceases to be in force, the period of protection of a policy under the act will expire two years after the date when the act ceases to be in force and settlement will be made as above provided. Any amount paid by the United States to an insurer on account of a policy protected under the provisions of the act will become a debt due the United States by the insured on whose account payment was made and such amount will be collected by deduction from any amount due said insured by the United States or as otherwise authorized by law.

§ 7.31 *Policy under protection of act.* A policy placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 and which was under the protection thereof on October 6, 1942, by reason of a finding having been made prior to that date, will remain subject to the provisions of said act and the regulations published under authority thereof except that the policy will be subject to the benefits and privileges governing the period of protection and settlement as provided in sections 403, 404, and 405 of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. If a policy was protected under the provisions of said act of 1940 and the period of protection terminated prior to October 6, 1942, the provisions of Article IV of the amendments of 1942 and the regulations published under the authority thereof are not applicable to the policy except that any premium which the Government has guaranteed under such policy will be for settlement in accordance with the mode of settlement elected by the insurer as provided in section 408 of the amendments of 1942.

§ 7.32 *Election by insurer.* Any insurer holding certificates issued under authority of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 on account of policies protected under said Article, may surrender such certificates to the United States on or before January 4, 1943, and elect to receive the guarantee of premiums and the mode of settlement for such policies as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. The insurer desiring to take such action shall state that, pursuant to the provisions of section 408 of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, it elects to receive the guarantee of unpaid premiums and interest thereon and the mode of settlement as provided by said amendments, in lieu of the method of settlement and the requirement for accounts and reports prescribed by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, and that it therefore surrenders to the United States all certificates of indebtedness issued to it by the Administrator of Veterans' Affairs under said act, giving the numbers of certificates surrendered and attaching same to the release signed by the insurer. The insurer will also submit to the Veterans' Administration at the earliest practicable date a schedule of all policies which were covered under Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, giving name of insured, face amount of policy, policy number and date of appli-

cation for protection under said act. In the case of policies as to which the period of protection expired prior to October 6, 1942, if the insurer has elected to accept the provisions of section 408 (2) of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 within the time specified therein, the insurer will submit the statement of account provided by paragraphs (d) and (e) of § 7.29 and in case there is a balance due by the United States to the insurer, payment in favor of the insurer will be certified. If the insurer does not elect to accept the provisions of section 408 (2) of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, on or before January 4, 1943, then the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 and the regulations in this chapter, will govern the accounting as between the insurer and the Government.

§ 7.33 *Beneficiary or assignee.* In administering the provisions of Article IV of the act, all matters pertaining thereto shall be confined to the interest of the insured, the insurer, and the Government; therefore, it will not be necessary to procure the consent of a beneficiary, or an assignee, or any person, who may have a right or interest, either vested or inchoate, in the proceeds of the policy, as a prerequisite to placing a policy under the protection of the act. Any existing right of an insured to change a beneficiary designation or select an optional settlement for a beneficiary while the policy is under the protection of the act is not affected by the provisions of the act.

§ 7.34 *Termination.* Section 604 of Soldiers' and Sailors' Civil Relief Act of 1940, provides that the act shall remain in force until May 15, 1945; *Provided*, That should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter.

PART 8—NATIONAL SERVICE LIFE INSURANCE

AUTHORITY: §§ 8.0 to 8.108 issued under secs. 601–618, 54 Stat. 1008–1014, secs. 1–16, 60 Stat. 781–789; 38 U. S. C. 512d, 801–818. Statutes giving special authority are cited in parentheses at the end of affected sections.

APPLICATIONS

§ 8.0 *Eligibility.* (a) Persons in the active service in the land or naval forces of the United States on October 8, 1940, and persons entering such service after that date (including those selected for training and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940) under orders to active duty for a period of not less than thirty-one days, upon written application by any such person and payment of premiums while in such active service, shall be granted National Service Life Insurance, on one or more of the following plans, in an amount of not more than $10,000 or less than $1,000 in multiples of $500, in accordance with subparagraphs (1) and (2) of this paragraph: five-year level premium term, ordinary life, twenty-payment life, thirty-payment life, twenty-year endowment, endowment at age sixty, and endowment at age sixty-five: *Provided,* That no policy may be issued for less than $1,000. Such insurance must become effective while the applicant is in active service and in accordance with the provisions of § 8.2 (a). No person may carry at any one time a combined amount of insurance in excess of $10,000 under the War Risk Insurance Act, as amended, the World War Veterans' Act, 1924, as amended, and the National Service Life Insurance Act of 1940, as amended. Application for National Service Life Insurance should be made on forms prescribed by the Administrator, but any statement in writing which in substance meets the requirements of this section shall be considered as an application provided that the first monthly premium is paid, advanced or authorized to be deducted or allotted from pay at time of such application.

(1) Every person who is commissioned and ordered into, or who is examined, accepted, and enrolled in the active service in the land or naval forces after October 8, 1940, shall be granted such insurance without medical examination, provided application therefor is made while the applicant is in the active service and within 120 days after entrance into such service. Entrance into active service shall include a re-entrance, but the provisions of section 602 (a) of the act shall not apply where the re-entrance is a continuation of previous active service without interruption.

(2) Any person in the active service not eligible for insurance under subparagraph (1) of this paragraph, shall be granted such insurance upon application made at any time while in the active service, provided the applicant is in good health at the time of such application and furnishes evidence thereof satisfactory to the Administrator of Veterans' Affairs.

(b) Applications for insurance under section 602 (c) (2) of the National Service Life Insurance Act, as amended August 1, 1946. Persons who were in the active service between October 8, 1940, and September 2, 1945, both dates inclusive, may be granted National Service Life Insurance on one or more of the plans specified in paragraph (a) of this section in an amount of not more than $10,000 nor less than $1,000, in multiples of $500, upon compliance with the conditions stated below: *Provided,* That no policy may be issued for less than $1,000.

(1) Written application therefor by any such person.

(2) Payment of the first monthly premium.

(3) Proof, satisfactory to the Administrator, that the applicant is in good health.

(4) The amount of insurance here granted plus the amount of any other insurance (National Service Life—United States Government life—War Risk) in force under premium-paying conditions or as extended insurance, shall not exceed $10,000.

(5) No person who has surrendered his National Service Life Insurance for a cash value or for paid-up insurance shall be entitled to apply for insurance under this paragraph to the extent of the amount of insurance so surrendered.

Service in the Philippine Commonwealth Army during the period stated above shall not be considered active service for the purpose of granting new insurance under section 602 (c) (2) of the act, as amended.

Where application is made prior to January 1, 1950, the application will not be denied on the ground that the applicant is not in good health by reason of any disability, less than total in degree, resulting from or aggravated by active service between October 8, 1940, and September 2, 1945.

An application for insurance hereunder should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this section may be considered an application. (Sec. 602 (b), 54 Stat. 1009, sec. 2, 60 Stat. 781, sec. 1, Public Law 5, 80th Cong.; 38 U. S. C. 802, 802 note)

§ 8.1 *Definition of "good health".* The words "good health" when used in connection with insurance, mean that the applicant is, from clinical or other evidence, free from disease, injury, abnormality, infirmity, or residual of disease or injury to a degree that would tend to weaken or impair the normal functions of the mind or body or to shorten life.

The existence of "good health" shall not be denied in connection with any application for reinstatement of insurance, or for new insurance if such application is submitted prior to January 1, 1950, and if the disability or disabilities, less than total in degree, resulted from or were aggravated by active military or naval service between October 8, 1940, and September 2, 1945, both dates inclusive.

EFFECTIVE DATE

§ 8.2 *Effective date*—(a) *Insurance applied for by persons in active service.* The effective date of a National Service Life Insurance policy granted under section 602 (a), (b), (c) (1) or (d) (1) of the National Service Life Insurance Act of 1940, as amended, shall not be established prior to October 8, 1940, nor prior to the entrance of the applicant into active service. The effective date of the policy shall not be established later than the first day of the month following the date of application, or after termination of active service.

(1) Subject to the foregoing limitations the effective date of a National Service Life Insurance policy may be established upon written request by the applicant as follows:

(i) As of the date on which valid application and tender of premiums are made: *Provided,* That a premium advanced by the service department under the provisions of Public Law 451, 77th Congress, and regulations of the department promulgated thereunder shall be deemed to be a tender of the first premium.

(ii) As of the first day of month in which valid application and tender of premiums are made.

(iii) As of the first day of month following that in which valid application is made and premium tendered or allotment of pay established.

(iv) As of the first day of any month, but not more than six months, prior to the month in which valid application and tender of premium are made: *Provided,* That there be paid (*a*) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (*b*) the full premium on the amount of insurance for the month in which application is made.

(2) Unless otherwise specified by the applicant, the effective date of National Service Life Insurance shall be established as follows:

(i) As of the date on which valid application and tender of premium are made: *Provided,* That a premium advanced by the Service Department under the provisions of Public Law 451, 77th Congress, and regulations of the Department promulgated thereunder shall be

deemed to be a tender of the first premium.

(ii) If the first premium be not tendered or advanced as provided above, such insurance shall be effective as of the first day of the month following the month in which valid application is made and allotment of pay established.

(b) *Insurance applied for by persons who had service between October 8, 1940, and September 2, 1945.* The effective date of a policy issued under section 602 (c) (2) of the National Service Life Insurance Act, as amended, may be established upon written request of the applicant as follows:

(1) As of the date on which valid application and tender of premium are made.

(2) As of the first day of the month in which valid application and tender of premium are made.

(3) As of the first day of the month following the month in which valid application and tender of premium are made.

(4) As of the first day of any month, but not more than six months, prior to the month in which valid application and tender of premium are made: *Provided,* That there be paid (i) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (ii) the full premium on the amount of insurance for the month in which application is made.

Unless otherwise specified by the applicant the effective date of National Service Life Insurance shall be established as of the date on which valid application and tender of premiums are made. (Sec. 602b, 54 Stat. 1009, 57 Stat. 64, sec. 2, 60 Stat. 781, sec. 1, Pub. Law 5, 80th Cong.; 38 U. S. C. 802, 802 note)

PREMIUMS

§ 8.3 *Premium rates.* National Service Life Insurance is granted at the premium rate for the age nearest birthday anniversary of the applicant at the time the policy becomes effective in accordance with the premium rates published in VA Insurance Form 1535.

§ 8.4 *Premiums on National Service Life Insurance.* National Service Life Insurance is granted in consideration of and subject to the terms and conditions set forth in the policy and in further consideration of the payment of the monthly premium due and payable on the day the policy takes effect and on the same day of each succeeding month during the lifetime of the insured or for the period for which premiums are due and payable as provided by the terms and conditions of the policy contract.

§ 8.5 *Due date of premiums.* Premiums on National Service Life Insurance are due and payable monthly in advance in legal tender of the United States of America to the Treasurer of the United States in the city of Washington, District of Columbia. Premiums may be paid annually, semiannually, or quarterly in advance, in which case the premium payable will be the sum of the monthly premiums for the period discounted at 3 per centum per annum. The discounted premiums for these periods are stated on the first page of the policy. At maturity the discounted value at 3 percentum per annum of the premiums paid in advance beyond the current month shall be refunded to the beneficiary. If any premium be not paid when due, the policy shall cease and become void except as otherwise provided.

§ 8.6 *Payment of premiums; insured in the active military, naval, or Coast Guard service.* Premiums on National Service Life Insurance may be paid by persons in the active military, naval, or Coast Guard service (a) by direct remittance to the Veterans' Administration, or (b) by allotment of service pay.

§ 8.7 *Payment of insurance premiums by mail.* When it appears by proof satisfactory to the Administrator of Veterans' Affairs that the person to whom insurance has been granted under the National Service Life Insurance Act of 1940, or any person authorized to act on his behalf, has deposited in the mail within the grace period allowed by regulation for payment of a premium an envelope, properly addressed to the Veterans' Administration, Washington, D. C., or to a regional office or facility of the Veterans' Administration, containing money, check, draft or money order, in payment of a premium, such insurance will not lapse for nonpayment of such premium within the grace period: *Provided,* That such envelope is delivered to the Veterans' Administration without return to the sender; and, *Provided further,* That if tender is by check or draft, such draft is honored on presentation for payment.

§ 8.8 *Deduction of insurance premiums from compensation, retirement pay or pension.* The insured under a National Service Life Insurance policy may authorize the monthly deduction of premiums from disability compensation, death compensation, retirement pay, disability pension, or death pension, that may be due and payable to him under any laws administered by the Veterans' Administration in accordance with the following provisions:

(a) The authorization must be in writing over the signature of the insured, or his legal representative, and whenever practicable on such forms as may be prescribed by the Veterans' Administration. If insured is incompetent and has no legal representative and has a wife to whom benefits are being paid pursuant to sections 2 or 13, Public No. 144, 78th Congress, and § 14.201 (a) of this chapter, she may authorize payment of insurance premiums through the deduction system. If insured is incompetent and has no legal representative and an institutional award has been made in his behalf, the authorization may be executed by the manager of the facility in which the insured is hospitalized or receiving domiciliary care, and in appropriate cases by the chief officers of State hospitals or other institutions to whom similar awards may have been approved.

(b) The monthly disability compensation, death compensation, retirement pay, disability pension or death pension so due and payable must be equal to, or in excess of, the amount of the insurance premium figured on a monthly basis.

(c) The authorization will be effective on the first day of the month in which it is received by the Veterans' Administration, unless the insured elects to have the authorization become effective on the first day of a succeeding month.

(d) The authorization may be canceled by the insured at any time by notice in writing to the Veterans' Administration. Such cancelation will be effective on the first day of the month following the month in which it is received by the Veterans' Administration.

(e) If the benefits payable to the insured are apportioned under the regulations of the Veterans' Administration now in effect or hereafter issued, the deduction authorized by the insured shall be from that portion awarded to the insured under such regulations.

§ 8.9 *Effective date of authorization for deduction of insurance premiums from compensation, retirement pay, or pension.* When premium deductions are authorized by the insured under National Service Life Insurance in accordance with the provisions of the regulations in this chapter, the Veterans' Administration will make monthly deductions from the disability compensation, death compensation, retirement pay, disability pension, or death pension, due and payable to the insured, of an amount sufficient to pay the monthly premium on the insurance. Such deductions shall begin with the month in which the authorization is effective and continue so long as the disability compensation, death compensation, retirement pay, disability pension, or death pension, due and payable to the insured is sufficient to pay the monthly insurance premium, unless the authorization is sooner canceled or otherwise terminated.

§ 8.10 *Premiums to be deducted from compensation, retirement pay, or pension, treated as paid, for purpose of preventing lapse.* When premium deductions are authorized by the insured under National Service Life Insurance, in accordance with the provisions of the regulations in this chapter, the insurance premium will be treated as paid for the purpose of preventing lapse of the insurance, although such deduction is not in fact made, if upon the due date of the premium there is due and payable to the insured an amount of disability compensation, death compensation, retirement pay, disability pension, or death pension sufficient to provide the payment. Any premium authorized to be deducted from disability compensation, death compensation, retirement pay, disability pension, or death pension, due and payable to the insured and not actually paid, shall be deducted from any amount of current disability compensation, death compensation, retirement pay, disability pension, or death pension that may become due and payable to the insured. The amounts so deducted for premiums shall, except as otherwise provided in § 8.102, be deposited and covered into the Treasury to the credit of the National Service Life Insurance Fund.

§ 8.11 *Termination of the authorization to deduct insurance premiums from compensation, retirement pay, or pension.* Deduction of insurance premiums on National Service Life Insurance shall cease and the authorization shall terminate if the disability compensation, death compensation, retirement pay, disability pension, or death pension, becomes insufficient to provide the premium, or if disability compensation, death compensation, retirement pay, disability pension, or death pension, is no longer due and payable to the insured. If authorization was executed by the manager of a Veterans' Administration hospital or home or chief officer of a State hospital or other institution to make deductions from an institutional award, the authorization will cease and terminate at the termination of the institutional award, and if subsequent premiums are to be paid by deduction from monthly benefit payments, another authorization must be executed by the insured or his legal representative or his wife. (See § 8.8 (a).) The insurance shall lapse after the termination or cancelation of the authorization to deduct premiums from disability compensation, death compensation, retirement pay, disability pension, or death pension, unless the premium be otherwise paid within the grace period. The insured will be notified, by letter directed to his last address of record, of the termination of the authorization to deduct premiums; but the failure to give such notice or the failure to receive such notice, shall not prevent lapse of the insurance.

GRACE PERIOD

§ 8.14 *Establishment of grace period.* For the payment of any premium under a National Service Life Insurance policy, a grace period of thirty-one days without interest will be allowed, during which time the policy will remain in force; but if the policy shall mature within the grace period, the unpaid premium or premiums shall be deducted from the amount of insurance payable.

§ 8.15 *Computation of grace period.* For the purpose of determining whether a premium tendered on National Service Life Insurance shall be accepted and a regular receipt issued therefor, the grace period for the payment of the premium shall be computed so as to include thirty-one days from and after the date on which the premium was due. But if the last day of the grace period falls on Sunday or a legal holiday the premium will be accepted if tendered on the next following business day. The postmark date will govern the date on which the premium was tendered. The monthly premium when paid within the grace period shall be deemed to carry such insurance in force for the month for which the premium was due. If a premium is not paid prior to the expiration of the grace period, the effective date of the lapse shall be the due date of the premium in default.

LAPSE

§ 8.16 *Lapse for nonpayment of premium.* If any premium be not paid when due, the National Service Life Insurance policy shall cease and become void, except as otherwise provided in the policy.

§ 8.17 *Nonlapse while insured is in active military, naval, or Coast Guard service.* Except as provided in § 8.18, National Service life Insurance will not lapse while the insured is in the active military, naval, or Coast Guard service of the United States, if an allotment of active service pay had been established to cover premiums for such insurance.

§ 8.18 *Lapse while insured is in active military or naval service.* National Service Life Insurance will lapse and terminate while the insured is in the active military or naval service of the United States:

(a) If the insured fails to designate a method of payment of premiums at the time of applying or at any time elects to pay premiums on said insurance otherwise than by allotment of pay and such premiums are not paid prior to expiration of the grace period.

(b) Except as provided in § 8.20, if the service department shall discontinue the allotment and premium is not otherwise paid prior to expiration of the grace period.

§ 8.19 *Lapse at discharge or resignation from active service.* When the insured under a National Service Life Insurance policy shall provide for payment of premiums by allotment of pay, any previously authorized method of payment of premiums shall be deemed to be revoked. The insurance will lapse upon termination of the allotment because of discharge or resignation from the active service unless the premium be paid prior to expiration of the grace period.

§ 8.20 *Nonlapse of insurance during active service prior to date of enactment of Public Law 589, 79th Congress.* (a) Where the insured provided for payment of the premiums by authorizing in writing the deduction of premiums from his service pay, insurance shall be deemed not to have lapsed while he remained in active service, prior to the date of enactment of Public Law 589, 79th Congress, approved August 1, 1946, provided the deduction of premiums was discontinued because (1) the insured was discharged to accept a commission; or (2) the insured was absent without leave, if restored to active duty; or (3) the insured was sentenced by court martial, if he was restored to active duty, required to engage in combat, or killed in combat. If the insured died while the insurance was continued in force as provided above, payment of the benefits shall be made directly from the National Service life insurance appropriation, and any premiums due on such insurance shall be deducted from the proceeds of the insurance.

(b) The provisions of the foregoing paragraph shall not apply to any insurance forfeited under section 612 of the National Service Life Insurance Act, as amended.

REINSTATEMENT

§ 8.22 *Reinstatement of National Service Life Insurance.* Subject to the provisions of the National Service Life Insurance Act, as amended, and regulations issued thereunder, any insurance which has lapsed or may hereafter lapse and which has not been surrendered for a cash value or for paid-up insurance, may be reinstated upon written application signed by the applicant, and, except as hereinafter provided, upon payment of all premiums in arrears, with interest from their several due dates, provided such applicant at the time of application and tender of premiums is in the required state of health as shown in paragraph (a) or (b) of § 8.23, whichever is applicable, and submits evidence thereof at the time of application and tender of premiums as may be satisfactory to the Administrator of Veterans Affairs: *Provided,* That interest on premiums in arrears shall be at the rate of five per centum per annum, compounded annually, to the first monthly premium due date after July 31, 1946, and thereafter at the rate of four per centum per annum, compounded annually: *Provided further,* That the payment or reinstatement of any indebtedness against any policy must be made, and if such indebtedness with interest exceeds the reserve of the policy at the time of application for reinstatement thereof, then the amount of such excess shall be paid by the applicant as a condition of the reinstatement of the indebtedness and of the policy: *Provided further,* That a lapsed National Service Life Insurance policy which is in force under extended term insurance may be reinstated without health statement or other medical evidence, if application and tender of premiums with interest are made not less than five years prior to the date such extended insurance would expire: *Provided further,* That in any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period such policy may be reinstated upon application and payment of the premiums with interest, and health statement or other medical evidence will not be required: *And provided further,* That National Service life insurance on the level premium term plan may be reinstated by written application of the insured accompanied by evidence of insurability and tender of two monthly premiums, but such insurance when reinstated without payment of all premiums in arrears with interest shall have no reserve value. Except as provided in § 8.84, application for reinstatement of level premium term insurance accompanied by evidence of insurability and tender of premiums must be submitted prior to the expiration of the five-year term period.

When the insured under a National Service life insurance policy on the level premium term plan makes inquiry prior to the expiration of the grace period disclosing a clear intent to continue insurance protection, such as a request for information concerning premium rates or conversion privileges, etc., an additional reasonable period not exceeding sixty days may be granted for payment of premiums due; but the premiums in any such case must be paid during the lifetime of the insured. (Sec. 9, 60 Stat. 785, sec. 3, P. L. 5, 80th Cong.; 38 U. S. C. 802)

§ 8.23 *Health requirements.* National Service Life Insurance on any plan may

be reinstated if application and tender of premiums are made:

(a) On or before July 31, 1948, or within three months after lapse, whichever is later, provided the applicant be in as good health on the date of application and tender of premiums as he was on the due date of the premium in default and furnishes evidence thereof satisfactory to the Administrator.

(b) Subsequent to July 31, 1948, and after expiration of the three-month period mentioned in paragraph (a) of this section, provided applicant is in good health (§ 8.1) on the date of application and tender of premiums and furnishes evidence thereof satisfactory to the Administrator of Veterans' Affairs. (Sec. 9, 60 Stat. 785, sec. 3, P. L. 5, 80th Cong.; 38 U. S. C. 802)

§ 8.24 *Application and medical evidence.* The applicant for reinstatement of National Service Life Insurance, during his lifetime and before becoming totally disabled, must submit a written application signed by him and furnish evidence of health as required in § 8.23 at the time of application satisfactory to the Administrator of Veterans' Affairs and upon such forms as the Administrator shall prescribe or otherwise as he shall require. Applicant's own statement of comparative health may be accepted as proof of insurability for the purpose of reinstatement under § 8.23 (a), but, whenever deemed necessary in any such case by the Administrator, report of physical examination may be required. Applications for reinstatement submitted after expiration of the applicable period mentioned in § 8.23 (a), must be accompanied by report of physical examination made in accordance with the provisions of § 8.64: *Provided,* That if the insurance becomes a claim after the tender of the amount necessary to meet reinstatement requirements but before full compliance with the requirements of this section, and the applicant was in a required state of health at the date that he made the tender of the amount necessary to meet reinstatement requirements, and that there is satisfactory reason for his noncompliance, the Director, Underwriting Service, in Central Office cases, and the Director, Insurance Service, in branch office cases, may, if the applicant be dead, waive any or all requirements of this section (except payment of the necessary premiums) or, if the applicant be living, allow compliance with this section as of the date the required amount necessary to reinstate was received by the Veterans' Administration.

§ 8.25 *Reinstatement in the month following date of lapse.* Where a premium on National Service life insurance is not paid within the grace period but is tendered not more than 15 days after the date of expiration of the grace period, such premium may be regularly applied as premium for the unpaid month, provided the insured at the time of tendering the delayed premium is in as good health as he was on the due date of the premium in default and furnishes a statement to that effect not more than 31 days after the date such delayed premium was tendered.

DIVIDENDS

§ 8.26 *Dividends.* A National Service life insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans' Affairs. Any such dividends shall be paid in cash except that at the written request of the insured they may be left to accumulate on deposit provided the policy is in force on a basis other than extended term insurance or level premium term insurance. Payment of dividends shall be without interest except when left to accumulate on deposit in accordance with the insured's written request. Interest on dividend accumulations will be credited annually at such rate as the Administrator may determine. Dividend accumulations and unpaid dividends shall not be available for the payment of insurance premiums except at the written request of the insured made before default in payment of a premium. Any unpaid dividend on a lapsed policy will be paid in cash to the insured, if living, otherwise to his estate. Dividend accumulations will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§ 8.29 (a) and 8.30, respectively. Upon maturity of the policy, any dividend accumulations not previously withdrawn and any unpaid dividends will be payable in cash to the person currently entitled to receive payments under the policy. (Sec. 2, Pub. Law 5, 80th Cong.)

CASH VALUE AND POLICY LOAN

§ 8.27 *Cash value; other than 5-year level premium term policy.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.29 (b), shall become effective at the completion of the first policy year on any plan of National Service life insurance other than the 5-year level premium term plan; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3 per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve together with any dividend accumulations. For each month after the first policy year, for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the policy with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness: *Provided,* The policy has been in force by payment or waiver of the premiums for at least one year. (Sec. 2, Pub. Law 5, 80th Cong.)

§ 8.28 *Policy loan; other than five-year level premium term policy.* (a) At any time after the expiration of the first policy year and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his National Service life insurance policy, on any plan other than five-year level premium term, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. Except as prescribed in paragraph (b) of this section the loan shall bear interest at the rate of 5 per centum per annum, payable annually; and at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or any multiple thereof. Failure to pay either the amount of the loan or the interest thereon shall not avoid the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value the policy shall cease and become void.

(b) On and after August 1, 1946, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 4 per centum per annum. (Sec. 2, Pub. Law 5, 80th Cong.)

EXTENDED TERM AND PAID-UP INSURANCE

§ 8.29 *Provision for extended term insurance; other than five-year level premium term policies.* (a) After the expiration of the first policy year and upon default in the payment of a premium within the grace period, if a National Service life insurance policy on any plan other than five-year level premium term has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall not have a loan value, but shall have a cash value.

(b) Upon default in payment of a premium within the grace period and after the effective date of paragraph (b) of this section, on any plan of National Service life insurance other than five-year level premium term, if the policy has been in force by payment or waiver of the premiums for not less than three months nor more than 11 months, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the reserve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effec-

tive. Extended term insurance under this provision shall not have a cash or loan value. Paragraph (b) of this section shall be effective from and after August 2, 1948. (Sec. 2, Pub. Law 5, 80th Cong.)

§ 8.30 *Provision for paid-up insurance; other than five-year level premium term policies.* If a National Service life insurance policy on any plan other than five-year level premium term has not been surrendered for cash, upon written request of the insured and complete surrender of the policy with all claims thereunder, after the expiration of the first policy year and while the policy is in force under premium-paying conditions, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. Such paid-up insurance will be effective as of the expiration of the period for which premiums have been paid and earned; and, any premiums paid in advance for months subsequent to that in which the application for paid-up insurance is made shall be refunded to the insured. The paid-up insurance shall be with right to dividends. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.

CHANGE IN PLAN

§ 8.32 *Plans of National Service Life Insurance.* Subject to the conditions stated in §§ 8.33 and 8.34, National Service life insurance on the five-year level premium term plan may be converted to the following plans of insurance: Ordinary Life, Twenty Payment Life, Thirty Payment Life, Twenty Year Endowment, Endowment at Age Sixty, and Endowment at Age Sixty-five. (Sec. 2, Pub. Law 5, 80th Cong.)

§ 8.33 *Exchange of a five-year level premium term policy as of a current effective date.* National Service life insurance on the level premium term plan which is in force may be exchanged, effective as of the date any premium becomes due within the term period, for insurance of the same amount on any other plan issued by the Veterans' Administration under the National Service Life Insurance Act, 1940, as amended, upon payment by the insured (except where premium waiver is effective) of the current monthly premium at the attained age of the insured for the plan of insurance selected. The reserve (if any) on the policy will be allowed as a credit on the current monthly premium except where premium waiver is effective: *Provided,* That conversion to an endowment plan may not be made while the insured is totally disabled. The exchange will be made without medical examination except when deemed necessary to determine whether an applicant for exchange to an endowment plan is totally disabled, and upon complete surrender of the policy while in force by payment or waiver of premiums. Except as provided in § 8.84, conversion of the term policy must be effected within the five-year term period, and if not exchanged or converted prior to the expiration of such period all protection thereunder shall cease. (Sec. 2, Pub. Law 5, 80th Cong.)

§ 8.34 *Exchange of a level premium term policy as of a date prior to the current month.* National Service life insurance on the level premium term plan which is in force may be exchanged effective as of the date any premium has become due within the term period, for insurance of the same amount on any other plan issued by the Veterans' Administration under the National Service Life Insurance Act, 1940, as amended, upon payment by the insured of the difference between the reserve on the new policy and the reserve on the old policy and payment by the insured (except where premium waiver is effective) of the current monthly premium at the attained age of the insured as of the effective date of the new policy: *Provided,* That conversion to an endowment plan may not be made while the insured is totally disabled. The exchange will be made without medical examination except when deemed necessary to determine whether an applicant for exchange to an endowment plan is totally disabled, and upon complete surrender of the policy while in force by payment or waiver of premiums: *Provided,* Waiver of the premiums on the new policy shall not be effective prior to the date such policy change was made. Except as provided in § 8.84, conversion of the term policy must be effected within the five-year term period, and if not exchanged or converted prior to the expiration of such period all protection thereunder shall cease. (Sec. 2, Pub. Law 5, 80th Cong.)

§ 8.35 *Exchange to a policy bearing the same effective date and having a higher reserve value.* If the insured be not totally disabled, National Service life insurance on any plan other than five-year level premium term may be changed to insurance of the same amount, as of the same date and based on the same age, on any plan of insurance issued by the Veterans' Administration under the National Service Life Insurance Act of 1940, as amended, having a higher reserve value, upon payment by the insured of the difference between the reserve on the new policy and the reserve on the old policy. Such exchange will be made without medical examination except when deemed necessary to determine whether the insured be totally disabled and upon complete surrender of the policy while in force by payment of premiums.

§ 8.36 *Exchange to a policy bearing the same effective date and having a lower reserve value.* National Service life insurance may be exchanged within five years from the effective date for insurance of the same amount, bearing the same date, and based on the same age, on any plan of insurance issued by the Veterans' Administration having a lower reserve value except to the five-year level premium term plan: *Provided,* The applicant is in good health at the time of application and furnishes evidence thereof satisfactory to the Administrator upon such forms as the Administrator shall prescribe, or otherwise as he shall require. The old policy must be in force under premium-paying conditions and must be surrendered with all rights and claims thereunder. The difference between the reserve on the old policy and the reserve on the new policy, less any indebtedness, may be used to cover payment of future premiums or withdrawn in cash at the option of the insured. If the old policy has been in force for less than twelve months, the difference in reserve may be used only for the purpose of paying future premiums on the insurance and such premiums shall not be subject to withdrawal by the insured prior to the expiration of the first policy year. (Sec. 2, Pub. Law 5, 80th Cong.)

PREMIUM WAIVERS AND TOTAL DISABILITY

§ 8.40 *Requirements for waiver of premiums.* Upon written application by the insured payment of premiums may be waived during the continuous total disability of the insured which continues or has continued for six or more consecutive months, provided such disability commenced (a) subsequent to date of application for insurance, (b) while the insurance was in force under premium-paying conditions, and (c) prior to the insured's sixtieth birthday: *Provided,* This section shall not apply to any premium waiver authorized under sub-section 602 (d) (3) of the act, as amended. The insured shall be required to furnish proof satisfactory to the Administrator showing continuous total disability for at least six consecutive months, and may be denied benefits for failure to cooperate: *Provided further,* That in the event of death of the insured without filing application for waiver, such application may be filed by the beneficiary with evidence of the insured's right to waiver under the conditions of this section on or before August 1, 1947, or within one year after death of the insured, whichever is the later; or, if the beneficiary be insane or a minor, such beneficiary may file application for waiver with evidence of the insured's right to waiver under the conditions of this section, within one year after removal of such legal disability.

§ 8.41 *Effective date of premium waiver.* (a) Upon written application of the insured waiver of premiums may be granted effective as of the date six months continuous total disability commenced, but, except as hereafter provided, waiver in such cases shall not be effective as to any premium which became due more than one year prior to receipt of such application in the Veteran's Administration: *Provided,* That the Administrator may grant waiver of premiums in excess of such one year period in any case in which he finds that the insured's failure to submit timely application or satisfactory evidence to show the existence or continuance of total disability was due to circumstances beyond the insured's control: *Provided further,* That upon written application of the insured made on or before August 1, 1947, the Administrator shall grant waiver of any premium which became due not

more than five years prior to the date of enactment of the Insurance Act of 1946 (Pub. Law 589, 79th Cong., approved August 1, 1946), if otherwise authorized under the provisions of section 602 (n) of the act, as amended.

(b) Upon written application of the beneficiary as provided in § 8.40, waiver of premiums may be granted effective as of the date six months continuous total disability commenced, but, except as hereafter provided, waiver in such cases shall not be effective as to any premium which became due more than one year prior to the date of insured's death: *Provided*, That the Administrator may grant waiver of premiums in excess of such one year period in any case in which he finds that the insured's failure to submit timely application or satisfactory evidence to show the existence or continuance of total disability was due to circumstances beyond the insured's control: *Provided further*, That upon written application of the beneficiary made on or before August 1, 1947, the Administrator shall grant waiver of any premium which became due not more than five years prior to the date of enactment of the Insurance Act of 1946 (Pub. Law 589, 79th Cong., approved August 1, 1946), if otherwise authorized under the provisions of section 602 (n) of the act, as amended.

(c) Premiums tendered to cover a period which the waiver is effective shall be refunded without interest.

§ 8.42 *Discontinuance of premium waiver.* (a) The Administrator may require proof of continuance of total disability at any time he may deem same necessary. In the event it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding, and the insurance may be continued by payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy. The insurance shall not lapse prior to the date of expiration of the grace period allowed for the payment of such premium or prior to the expiration of thirty-one days after date of notice to the insured of the termination of the premium waiver, whichever is the later date. Such notice shall be sent by registered mail, return receipt requested, and sufficient notice will be deemed to have been given when such letter has been placed in the mails by the Veterans Administration: *Provided*, That the Administrator may grant an additional period of not more than 31 days for payment of the premiums in any case in which it is shown that the failure to make payment within 31 days after notice as defined above was due to circumstances beyond the insured's control; but the premiums in any such case must be paid during the lifetime of the insured. The failure of the insured to furnish a correct current address at which mail will reach him promptly shall not be grounds for a further extension of time for payment of premiums under this paragraph.

(b) In the event a finding that insured is no longer totally disabled is made at the same time a finding is made of total disability entitling the insured to a waiver of premiums while so disabled, the waiver of premiums shall cease as of the date on which total disability ceased and continuance of the insurance in such cases shall be subject to the timely payment of the premiums as they become or have become due and payable. The due date of the first premium payable subsequent to the date total disability ceased is the next regular due date of the premium under the policy, and if such premium was not paid within 31 days after the due date, the insurance lapsed.

(c) If the insured shall fail to cooperate with the Administrator in securing any evidence he may require to determine whether total disability has continued, the premium waiver shall cease effective as of the date finding is made of such failure to cooperate, and the insurance may be continued by payment of the premiums within 31 days after notice of termination as provided in paragraph (a) of this section.

§ 8.43 *Total disability.* Total disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech, shall be deemed total disability for insurance purposes.

§ 8.44 *National Service Life Insurance issued pursuant to section 602 (d) (3) (A), National Service Life Insurance Act, as amended.* In any case where a veteran has National Service Life Insurance in force by the payment of premiums in a sum in excess of $5,000 and his application for waiver of premiums under section 602 (n) is denied because of a finding that he became totally disabled prior to the issuance of the insurance and is entitled to waiver of premiums under section 602 (d) (3), National Service Life Insurance Act, as amended, he will be advised of his right to surrender any of such insurance in excess of $5,000 and obtain a policy of insurance in the amount allowable under section 602 (d) (3) of the National Service Life Insurance Act, as amended, that is, an amount of insurance not in excess of $5,000, which together with any other United States Government life insurance or National Service life insurance then in force, will not exceed in the aggregate $10,000. He will also be advised that he may continue the remaining National Service life insurance in force by the payment of premiums. Application for gratuitous insurance must be made within the statutory time limit. (Sec. 1, 56 Stat. 657, sec 2, 58 Stat. 762; 38 U. S. C. 802)

BENEFICIARIES

§ 8.46 *Beneficiary designations.* The insured shall have the right to designate as beneficiary any person or persons, firm, corporation or other legal entity (including the estate of the insured) individually or as trustee, for insurance maturing on or after the date of enactment of Public Law 589, 79th Congress, approved August 1, 1946: *Provided*, That as to any insurance which matured prior to August 1, 1946 designated beneficiaries shall be restricted to persons within the permitted class of designated beneficiaries, as follows: Wife (husband), child (including an adopted child, stepchild, illegitimate child), parent (including parent through adoption, stepparent, and persons who stood in loco parentis to the insured for a period of not less than one year prior to entry into active service), brother or sister (including those of the half blood) of the insured.

A beneficiary designation shall be made by notice in writing to the Veterans' Administration signed by the insured. A beneficiary designation, but not a change of beneficiary, may be made by last will and testament duly probated. A stepparent, stepchild or illegitimate child cannot be paid insurance which matured prior to August 1, 1946, unless specifically designated as a beneficiary by the insured. A designation of beneficiary need not be made in the application for insurance, but may be made at a later date. (Sec. 602 (g), 54 Stat. 1010, sec. 8, 56 Stat. 659, sec. 4, 60 Stat. 782; 38 U. S. C. 802)

§ 8.47 *Beneficiary changes.* The insured shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel the beneficiary designation, or to change the beneficiary, but a change of beneficiary to a person not within the permitted class of beneficiaries set forth in § 8.46 shall not be effective as to insurance which matured prior to August 1, 1946. A change of beneficiary to be effective must be made by notice in writing signed by the insured and forwarded to the Veterans' Administration by the insured or his agent, and must contain sufficient information to identify the insured. Whenever practicable such notices shall be given on blanks prescribed by the Veterans' Administration. Upon receipt by the Veterans' Administration, a valid designation or change of beneficiary shall be deemed to be effective as of the date of execution: *Provided*, That any payment made before proper notice of designation or change of beneficiary has been received in the Veterans' Administration shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments. (Sec. 602 (g), 54 Stat. 1010, sec. 8, 56 Stat. 659, sec. 4, 60 Stat. 782; 38 U. S. C. 802)

§ 8.48 *Class and order of payment to other than designated beneficiary.* If no beneficiary was designated by the insured for insurance which matured prior to the enactment of Public Law 589, 79th Congress, approved August 1, 1946, or if the designated beneficiary of such insurance did not survive the insured or dies or has died prior to completion of payment of the installments certain payable under the provisions of the act and the terms of the policy, the installments of insurance remaining unpaid shall be

paid to persons in the permitted class of beneficiaries and in the order named:

(a) Widow (widower) of the insured.

(b) Child or children of the insured (including adopted children), in equal shares.

(c) Parent or parents who last bore such relationship to the insured (including parent through adoption and persons who stood in loco parentis to the insured for a period of not less than one year prior to entry into active service), in equal shares,

(d) Brothers and sisters of the insured (including those of the half blood), in equal shares. (Sec. 602 (g), 54 Stat. 1010, sec. 8, 56 Stat. 659, sec. 4, 60 Stat. 782; 38 U. S. C. 802)

DEATH BENEFITS

§ 8.49 *Limitations on entitlement and payment.* Any payment of insurance made to a person represented by the insured to be within the permitted class of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments. The following provisions are applicable only to insurance which matured prior to the enactment of Public Law 589, 79th Congress, approved August 1, 1946. No person shall have a vested right to any installment or installments of the insurance and no installment of insurance shall be paid to the heirs, creditors, or legal representatives as such of the insured or of any beneficiary. If no person within the permitted class survives to receive the insurance or any part thereof, no payment of the unpaid installments shall be made, except that if the reserve of a converted policy, together with dividend accumulations, less any indebtedness under such policy, exceeds the amount paid to the beneficiaries, such excess shall be paid to the estate of the insured unless the estate of the insured would escheat under the laws of his place of residence, in which event no payment shall be made.

When the amount of an individual monthly payment is less than $5, such amount may in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually. (Sec. 1, 58 Stat. 762, sec. 5 (b), 60 Stat. 783, sec. 602 (k), 54 Stat. 1010; 38 U. S. C. 802)

§ 8.50 *Payment to first beneficiary where insurance matured prior to August 1, 1946.* Upon due proof of the death of the insured prior to the enactment of Public Law 589, 79th Congress, approved August 1, 1946 and while a National Service life insurance policy is in force, the monthly installments without interest, which have accrued since the death of the insured (the first installment being due on the date of the death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy shall be paid, as provided in § 8.75 to the beneficiary or beneficiaries entitled.

§ 8.51 *Payment after death of first beneficiary where insurance matured prior to August 1, 1946.* Upon due proof of death of the first beneficiary after payment has been made of at least one installment of insurance which matured prior to August 1, 1946 thereafter monthly installments in the same amount shall be paid to the person or persons entitled as beneficiary until all of the installments certain shall have been paid.

The foregoing provision, if payment of the insurance had originally commenced prior to September 30, 1944, is subject to the present beneficiary's right to change the mode of payment as provided in § 8.77 (b).

PROOF OF DEATH, AGE, OR RELATIONSHIP

§ 8.52 *Proof of death.* Where a claim is filed for National Service Life Insurance on account of the death of a person such death may be established as follows:

(a) By a copy of the public record of the State or community where death occurred, certified to by the custodian of such records; or by a duly certified copy of a coroner's report of death or a verdict of a coroner's jury, of the State or community where death occurred, provided such report or verdict properly identified the deceased.

(b) Where death occurs in a hospital or institution under the control of the United States Government, by a death certificate signed by the medical officer in charge, or by furnishing the evidence required under paragraph (a) of this section.

(c) Where death occurs while deceased was on the retired list, in an inactive duty status, or in the active service in the regular establishment of the United States Army, United States Navy, United States Marine Corps, or United States Coast Guard, by an official report of death from the War, Navy, or Treasury Departments, or by furnishing the evidence required under paragraph (a) of this section.

(d) When death occurs in a foreign country, by a United States consular report of death, bearing the signature and official seal of the United States consul, or by a certified copy of the public record of death authenticated by the United States consul, or other agency of the State Department.

(e) If the evidence called for in paragraphs (a), (b), (c), or (d) of this section cannot be obtained, the reason must be shown. If such reason is satisfactory, the fact of death may be established by the affidavits of persons who have personal knowledge thereof and have viewed the body of the deceased and know it to be the body of the person whose death is being established, setting forth their source of knowledge and all the facts and circumstances concerning the death, including the place, date, time, and cause thereof.

(f) In cases wherein proof of death, as defined in paragraphs (a) to (e), inclusive, of this section, cannot be furnished, officials specifically authorized to do so by the Administrator of Veterans' Affairs may make a finding of fact of death where death is otherwise shown by competent evidence. The best evidence, which from the nature of the case may be supposed to exist, must be furnished in these cases.

§ 8.53 *Presumption of death.* If evidence satisfactory to the Administrator is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of seven years, during which period no evidence of his existence has been received, the death of such individual as of the date of the expiration of such period may, for the purpose of the act, be considered as sufficiently proved: *Provided,* No State law providing for presumption of death shall be applicable to claims for National Service life insurance.

NOTE: *Evidence to establish age or relationship.* See § 3.46 of this chapter.

NOTE: *Validity and proof of marriage.* See §§ 3.49 and 3.50 of this chapter.

COLLECTION OF ANY INDEBTEDNESS

§ 8.55 *Collection of any indebtedness.* Any indebtedness against a National Service Life Insurance policy which has not been paid off in cash prior to maturity shall be liquidated by reducing the amount of each monthly instalment in the proportion which the indebtedness bears to the face amount of the insurance.

AGE

§ 8.56 *Misstatement of age.* If the age of the insured under a National Service Life Insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Veterans' Administration at any time upon satisfactory proof.

ASSIGNMENTS

§ 8.59 *Assignments.* The proceeds of a National Service life insurance policy shall not be assignable except that the person designated as beneficiary may assign all or any part of his interest in the insurance to the insured's widow, widower, child, father, mother, grandfather, grandmother, brother or sister, provided the designated contingent beneficiary, if any, joins the beneficiary in the assignment and such assignment is delivered to the Veterans' Administration before any payments of the insurance have been made to the beneficiary.

Payment to the assignee shall be made in accordance with the option selected by the insured unless the insured selected Option 3 or 4. In the latter event the assignee will be paid in such number of equal monthly installments under Option 2, as most nearly conforms to the number of installments certain payable under the insured's election, or in 240 equal monthly installments, whichever is the lesser.

TAXATION AND EXEMPTION

§ 8.60 *Taxation and exemption.* (a) Payments of National Service life insurance as such are exempt from taxation, but such exemption does not extend to any property purchased in part or wholly out of such payments. Payments of insurance to a beneficiary under the provisions of the act are exempt from claims of creditors, and are not liable to at-

tachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

(b) The exemption shall apply against the United States or any agency thereof: *Provided,* The United States shall be entitled to collect by set-off or otherwise out of benefits payable to any beneficiary under a National Service life insurance policy, the amount of any indebtedness due the United States by such beneficiary because of overpayments or illegal payments made to such beneficiary under laws administered by the Veterans' Administration: *Provided further,* In the settlement of any claim arising out of the National Service Life Insurance Act of 1940, the United States shall be entitled to deduct the amount of unpaid premiums, or loans, or interest on such premiums or loans; or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits; or any other indebtedness existing under the particular insurance contract. (Sec. 5, 54 Stat. 1195; 38 U. S. C. 454a)

INSURANCE FORFEITURE

§ 8.61 *Insurance forfeiture.* Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the land or naval forces of the United States or refuses to wear the uniform of such forces, shall forfeit all rights to insurance. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but, the cash surrender value, if any, of such insurance on the date of death of the insured shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in the order specified in section 602 (h) (3) of the act: *Provided,* That such cash surrender value shall not be paid in cases in which all rights to insurance have been forfeited pursuant to the provisions of the first sentence of this section.

INCONTESTABILITY

§ 8.62 *Incontestability.* Subject to the provisions of § 8.61 all National Service life insurance policies heretofore or hereafter issued, reinstated or converted shall be incontestable from the date of issue, reinstatement or conversion except for fraud, nonpayment of premium or on the ground that the applicant was not a member of the military or naval forces of the United States.

EXAMINATIONS

§ 8.64 *Examination of applicants for insurance or reinstatement.* Where physical or mental examination is required of an applicant for National Service life insurance, or of an applicant for reinstatement of National Service life insurance, such examination may be made by a medical officer of the United States Army, Navy, or Public Health Service, or may be made free of charge to him by a full-time or part-time salaried physician at a regional office or hospital of the Veterans' Administration. Such examination may also be made, at the applicant's own expense, by a physician duly licensed for the practice of medicine by a State, Territory of the United States or the District of Columbia, who is not related to the applicant by blood or marriage, associated with him in business, or pecuniarily interested in the issuance or reinstatement of the policy. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable, may be accepted if submitted through the American Consul. The Administrator of Veterans' Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

§ 8.65 *Examination in connection with premium waiver.* Physical examination in connection with premium waiver may be made by a medical officer of the United States Army, Navy, or Public Health Service, or may be made at Government expense by a full-time or part-time salaried physician at a regional office or hospital of the Veterans' Administration. If an insured is unable to travel, because of physical or mental condition, the manager of a regional office or hospital may, on his own initiative or at the request of central office, authorize at Government expense examination at the residence of the insured. The Administrator of Veterans' Affairs may require such further medical examination or such additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the insured.

§ 8.66 *Expenses incident to examinations for insurance purposes.* Necessary transportation expenses incident to physical or mental examinations for insurance purposes at regional offices or hospitals shall be furnished when the insured is ordered to report for examination at the specific request of the director of the insurance service concerned or the manager of a regional office or hospital: *Provided,* Such expenses will be borne by the United States and will be paid from the appropriation, "Salaries and Expenses, Veterans' Administration." Transportation, meal and lodging requests in connection with reporting to and returning from the place of examination will be furnished the applicant provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Veterans' Administration will be in accordance with the Standardized Government Travel Regulations. If such an examination is made by a medical examiner on a fee basis, the fee will be based on the Veterans' Administration Schedule of Fees for Medical Services in force at the time the examination is made.

EXTRA HAZARDS

§ 8.69 *Definition of "Disease or injury traceable to the extra hazards of the military or naval service."* A disease or injury may be found to be traceable to the extra hazards of the military or naval service when it appears from the evidence that the said disease or injury was in fact caused by or is traceable to, the performance of duty in the land or naval forces (including the Coast Guard) of the United States.

CLAIMS ALLEGING INSURANCE CONTRACT WHERE THERE IS NO APPLICATION FOR INSURANCE ON FILE

§ 8.70 *Claims alleging insurance contract where there is no application for insurance on file.* In those case where claim is made alleging that a person made valid application for National Service life insurance and that the insurance is subject to reinstatement or a waiver of payment of premiums is in order, or that the insurance matured by reason of the death of the insured at a time when the insurance was in force and that there was a valid designation of beneficiary, and where there is no application for insurance on file, the claimant will be required to submit all available evidence concerning the alleged application for insurance in such manner and on such forms as may be deemed necessary. The evidence submitted by the claimant and the evidence as disclosed by records in possession of the Government will be considered by the director, underwriting service, and if found sufficient to establish as a fact that the said person did apply for insurance and if the other allegations of said claim are sustained a record of insurance will be established in accordance with such finding. However, if the director, underwriting service, decides that the evidence is not sufficient to establish as a fact that the said person applied for insurance as alleged, or decides that if insurance has been applied for as alleged the same would not be valid or not subject to reinstatement, or decides that the said person did not die at a time when the insurance would have been in force if insurance had been applied for, or in case of death that there was no valid designation of beneficiary, the claimant will be so informed and will be notified that unless he desires to appeal to the Administrator a disagreement exists, as to the matters in controversy as contemplated by the provisions of section 617 of the National Service Life Insurance Act of 1940, as amended, as far as the Veterans' Administration is concerned. Further, the claimant will be informed that an appeal may be taken from the decision to the Administrator of Veterans' Affairs by giving notice in writing within 60 days from the date of the letter advising of the unfavorable decision.

PARENTS, BROTHERS AND SISTERS OF ILLEGITIMATES

§ 8.71 *Parents, brothers, and sisters of illegitimates.* If the insured was born an illegitimate and not legitimatized before his death, the terms "parent," "father," "mother," "brother," and "sister" employed in the National Service Life Insurance Act, as amended, shall include as to relationship by consanguinity:

(a) The mother.

(b) The father, only if he shall establish that he can meet "in loco parentis" requirements of the act.

(c) Brothers or sisters, only if children of the same mother.

OPTIONAL SETTLEMENT

§ 8.75 *Mode of payment where insurance matured prior to August 1, 1946.* National Service life insurance which matured prior to the date of the enactment of Public Law 589, 79th Congress, approved August 1, 1946, shall be payable in the following manner:

(a) If the first beneficiary is under 30 years of age at the time of the death of the insured, in 240 equal monthly installments at the rate of $5.51 per month for each $1,000 of insurance.

(b) If the first beneficiary is 30 or more years of age at the time of death of the insured, in equal monthly installments for life, with 120 months certain (option 3, § 8.79).

(c) In lieu of the mode of payment shown in paragraphs (a) and (b) of this section, the insured or the first beneficiary may elect settlement as a refund life income (option 4, § 8.79).

§ 8.76 *Selection and revocation of option.* The insured under a National Service life insurance policy may, during his lifetime, make his selection of the optional settlement set forth in § 8.79, but such selection shall not be valid unless and until notice thereof is received in the Veterans' Administration. The insured may select a different optional settlement for the contingent beneficiary from that selected for the principal beneficiary, but, if the principal beneficiary entitled to settlement in one sum survives the insured or if the principal beneficiary not entitled to settlement in one sum survives the insured and receives any payment, the option selected for the contingent beneficiary shall have no force or effect, except as provided below: That where the insured has selected a lump-sum settlement for the contingent beneficiary and the principal beneficiary, not entitled to settlement in one sum, dies after payment has commenced but before all installments certain have been paid, the present value of the remaining unpaid installments certain shall be paid to the contingent beneficiary in one sum, unless such contingent beneficiary elects to continue to receive the remaining unpaid installments certain as they become due and payable. The insured may, during his lifetime, revoke his selection of the optional settlement, but the revocation shall not be valid unless and until notice thereof is received in the Veterans' Administration.

§ 8.77 *Election of optional settlement by beneficiary*—(a) *Insurance maturing on or after August 1, 1946.* If the insured under a National Service life insurance policy has not selected one of the optional settlements and dies on or after August 1, 1946, the insurance shall be payable in 36 equal monthly installments, but the designated beneficiary may elect to receive settlement under option 2, 3, or 4. Such an election shall not be valid unless and until it is received in the Veterans' Administration. If the insured has selected an optional settlement, then at the death of the insured the designated beneficiary may elect to receive payment in installments spread over a greater period of time than that selected by the insured; thus:

(1) If the insured has selected option 1, the beneficiary may elect to receive payment under option 2, 3, or 4.

(2) If the insured has selected option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2 or may elect to receive payment under option 3 or 4.

(3) If the insured has selected option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2 or may elect to receive payment under option 4, provided the number of installments certain payable under option 4 are not less than the number selected by the insured.

(4) If the insured has selected option 3, the beneficiary may elect to receive payment under option 4.

(5) If the insured has selected option 4 and named no contingent beneficiary, the beneficiary may elect to receive payment under option 3.

A change in the mode of settlement is not authorized after payment has commenced, but, where the insured has selected settlement under option 1, a beneficiary who has elected to receive payment under option 2, 3 or 4 may elect to receive the commuted value of any remaining unpaid installments certain. Settlement under any one of the options or payment to the beneficiary of said commuted value shall be in full and complete discharge of all liability under the contract.

Options 3 and 4 shall not be available if the beneficiary be a firm, corporation, legal entity (including the estate of the insured), or trustee.

Settlement under option 4 is not available to any beneficiary who is 69 or more years of age at the time of the death of the insured.

If the option selected by the insured or the designated beneficiary requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid under option 2 in such maximum number of monthly installments as are a multiple of 12 and will provide a monthly installment of not less than $10.

If the present value of the amount payable at the time any person initially becomes entitled to such payment is not sufficient to provide at least 12 monthly installments of not less than $10 each, such amount shall be payable in one sum.

(b) *Insurance matured prior to August 1, 1946.* If the insured under a National Service life insurance policy has not selected one of the optional settlements and died prior to August 1, 1946, payment will be made as provided in § 8.75, unless the first beneficiary elects settlement under option 4 (refund life income). If the insured selected settlement under the mode of payment provided in § 8.75, then at his death the beneficiary, if less than 69 years of age at the death of the insured, may elect to receive payment under option 4, but such an election shall not be valid unless and until it is received in the Veterans' Administration. If the insured selected option 4, payment will be made accordingly.

Except as provided below, a change in the mode of settlement is not authorized in any case in which payment has commenced, and settlement under any one of the options shall be in full and complete discharge of all liability under the contract: *Provided*, That where payments were commenced on or after September 30, 1944, but before the beneficiary was advised of the right of election, change in the mode of settlement may be effected if such beneficiary so elects within a reasonable period, ordinarily not more than 60 days, after notice has been sent regarding optional settlement: *Provided further*, That in any case in which payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, may, within 2 years after the enactment of Public Law 589, 79th Congress, approved August 1, 1946, elect a refund life income (option 4) payable in monthly installment adjusted as of the date of maturity of the insurance and based upon the age of the original payee at such maturity date, credit being allowed for payments made under the present mode of settlement.

§ 8.78 *Values for optional settlements.* The values for optional settlements on National Service Life Insurance are based on an insurance of $1,000 without indebtedness. If there is an indebtedness under a National Service Life Insurance policy, the values will be decreased accordingly. If the policy provided for a larger amount of insurance than $1,000 the values will be increased proportionately.

§ 8.79 *Options.* The optional settlements under a National Service Life Insurance policy maturing on or after the date of enactment of Public Law 589, 79th Congress, approved August 1, 1946, are as follows:

Option 1; insurance payable in one sum. Settlement under this option will be made only when selected by the insured. When such selection has been made, the face amount (less any indebtedness) will be payable in one sum upon the death of the insured.

Option 2; insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but, if the designated beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in §§ 8.89, 8.90, or 8.91, whichever may be applicable:

Number of monthly installments:	*Amount of each monthly installment*
36	$28.99
48	22.03
60	17.91
72	15.14
84	13.16
96	11.63
108	10.53
120	9.61
132	8.83
144	8.24
156	7.71
168	7.26
180	6.87

Number of monthly installments—Con.	*Amount of each monthly installment*
192	$6.53
204	6.23
216	5.96
228	5.73
240	5.51

Option 3; insurance payable in installments throughout life. The monthly installments noted below will be payable throughout the lifetime of the designated beneficiary; but, if such beneficiary dies before 120 of such installments have been paid, the remaining unpaid monthly installments will be payable as provided in §§ 8.89, 8.90, or 8.91, whichever may be applicable.

OPTION 3

Age of beneficiary at date of death of insured:	*Amount of each monthly installment per $1,000 of insurance payable to original beneficiary*
10 and under	$3.45
11	3.46
12	3.48
13	3.50
14	3.52
15	3.54
16	3.56
17	3.58
18	3.60
19	3.63
20	3.65
21	3.68
22	3.70
23	3.73
24	3.76
25	3.79
26	3.83
27	3.86
28	3.90
29	3.93
30	3.97
31	4.01
32	4.06
33	4.10
34	4.15
35	4.20
36	4.26
37	4.31
38	4.37
39	4.43
40	4.50
41	4.57
42	4.64
43	4.72
44	4.80
45	4.89
46	4.98
47	5.08
48	5.18
49	5.28
50	5.39
51	5.51
52	5.63
53	5.76
54	5.90
55	6.03
56	6.18
57	6.33
58	6.49
59	6.65
60	6.81
61	6.98
62	7.15
63	7.32
64	7.50
65	7.67
66	7.84
67	8.02
68	8.19
69	8.35
70	8.51
71	8.66

OPTION 3—Continued

Age of beneficiary at date of death of insured—Continued	*Amount of each monthly installment per $1,000 of insurance payable to original beneficiary*
72	$8.80
73	8.94
74	9.06
75	9.18
76	9.28
77	9.37
78	9.44
79	9.50
80	9.55
81	9.58
82	9.60
83	9.61
84	9.61
85	9.61

Option 4; refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in §§ 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if the beneficiary is 69 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

OPTION 4

[Beneficiaries of any age up to and including 68: Payable for life of first beneficiary with number of installments stated below guaranteed]

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
[1] 10	304	[1] $3.29	40	235	$4.26
11	303	3.31	41	232	4.32
12	302	3.32	42	228	4.39
13	300	3.34	43	225	4.45
14	298	3.36	44	222	4.52
15	296	3.38	45	218	4.60
16	295	3.40	46	214	4.68
17	293	3.42	47	211	4.76
18	291	3.44	48	207	4.85
19	290	3.46	49	203	4.94
20	288	3.48	50	199	5.04
21	285	3.51	51	195	5.14
22	284	3.53	52	191	5.25
23	281	3.56	53	187	5.36
24	279	3.59	54	183	5.48
25	277	3.62	55	179	5.60
26	274	3.65	56	175	5.73
27	272	3.68	57	171	5.87
28	270	3.71	58	166	6.03
29	267	3.75	59	162	6.18
30	265	3.78	60	158	6.34
31	262	3.82	61	154	6.52
32	260	3.86	62	150	6.69
33	257	3.90	63	145	6.90
34	254	3.95	64	141	7.10
35	251	3.99	65	137	7.32
36	248	4.04	66	133	7.55
37	245	4.09	67	129	7.79
38	241	4.15	68	124	8.07
39	239	4.20			

[1] For age 10 and under, same monthly installment is paid.

MATURITY BY DEATH DURING TOTAL DISABILITY OF LESS THAN SIX MONTHS' DURATION

§ 8.81 *Maturity by death during total disability of less than 6-months' duration.* In the event of the death of the insured within 6 months after becoming totally disabled, insurance will be deemed in force if such disability commenced (a) subsequent to the date of application for insurance, (b) while the insurance was in force under premium-paying conditions, and (c) prior to the insured's 60th birthday, and continued without interruption until the insured's death: *Provided,* That proof of the foregoing facts, satisfactory to the Administrator of Veterans' Affairs is filed by the beneficiary with the Veterans' Administration on or before September 30, 1945, or within 1 year after the insured's death, whichever is the later date: *Provided further,* That if the beneficiary be insane or a minor, the proof of such facts may be filed within 1 year after removal of such disability: *And provided further,* That the amount of the unpaid premiums shall be a lien against and deducted from the proceeds of the insurance. (Sec. 3, 58 Stat. 762; 38 U. S. C. 802)

AUTOMATIC EXTENSION OF FIVE-YEAR LEVEL PREMIUM TERM INSURANCE

§ 8.84 *Five-year level premium term insurance as extended by Public Law 118, 79th Congress.* National Service life insurance on the 5-year level premium term plan issued on or before December 31, 1945, and not exchanged or converted to another plan may be continued for an additional 3-year period dating from the expiration of the original 5-year term, and the premiums the insured is required to pay for term insurance during such additional period shall be the same as were required during the original 5-year term; insurance will be deemed to have been issued on or before December 31, 1945, if such insurance was applied for and made effective on or befor that date: *Provided,* That such term insurance may be exchanged or converted effective as of the date any premium becomes or has become due during the 5-year term period as extended by Public Law 118, 79th Congress, but in all other respects conversion will be effected in accordance with the requirements of §§ 8.33, 8.34, or 8.37, whichever may be applicable: *Provided further,* That any such term insurance which has lapsed or may hereafter lapse may be reinstated at any time prior to the expiration of the 5-year term period as extended, but in all other respects reinstatement will be effected in accordance with the requirements of §§ 8.22, 8.23, and 8.24: *And provided further,* That if any such policy be not exchanged or converted to a permanent plan prior to the expiration of the 5-year term period as extended, or renewed as provided in § 8.85, all protection thereunder shall cease (59 Stat. 315, 38 U. S. C. 802 note, Pub. Law 838, 80th Cong.).

RENEWAL OF FIVE-YEAR LEVEL PREMIUM TERM INSURANCE

§ 8.85 *Renewal of National Service life insurance on the 5-year level premium*

term plan. Pursuant to the provisions of an amendment approved June 29, 1948, amending subsection 602 (f) of the National Service Life Insurance Act of 1940, as amended (Pub. Law 838, 80th Cong., approved June 29, 1948), all or any part of National Service life insurance on the 5-year level premium term plan, in any multiple of $500 and not less than $1,000, issued before January 1, 1948, may be renewed without medical examination for an additional 5-year period, upon application therefor and payment of the premium at the 5-year level premium term rate required at the attained age of the insured, before the expiration of the first term period: *Provided,* That in any case in which the insured is shown by evidence satisfactory to the Administrator to be totally disabled at the expiration of the level premium term period of his insurance under conditions which would entitle him to continued insurance protection but for such expiration, such insurance, if subject to renewal under this regulation, shall be automatically renewed for an additional period of five years at the premium rate for the then attained age. The renewal of insurance for an additional 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be at the 5-year level premium term rate for the attained age of the applicant on that day: *Provided,* That no insurance may be renewed by any person who has exercised his optional right to change to another plan of insurance. (Pub. Law 838, 80th Cong.)

SETTLEMENT OF INSURANCE MATURING ON OR AFTER AUGUST 1, 1946

§ 8.88 *Payment to designated beneficiaries where insurance matures on or after August 1, 1946.* National Service life insurance maturing on or after the date of enactment of Public Law 589, 79th Congress, approved August 1, 1946, is payable to the designated beneficiary in 36 monthly installments unless one of the optional settlements as provided in § 8.79 has been selected by the insured or the designated beneficiary. The monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of the death of the insured) and the monthly installments which thereafter are payable in accordance with the option selected shall be paid to the designated beneficiary or beneficiaries.

§ 8.89 *Payment to estate of insured.* If no person is designated beneficiary by the insured, or if the designated beneficiary (including a contingent beneficiary) does not survive the insured, or if the designated beneficiary (including a contingent beneficiary) not entitled to a lump-sum settlement survives the insured and dies before payment has commenced, the face amount of insurance less any indebtedness shall be paid to the insured's estate in one sum: *Provided,* That in no event shall there be any payment to such estate of any sums which, if paid, would escheat. If the designated beneficiary (including the contingent beneficiary) not entitled to a lump-sum settlement survives the insured and dies after payment has commenced but before receiving all the benefits due and payable, the present value of the remaining unpaid installments certain shall be paid in one sum to the insured's estate: *Provided,* That in no event shall there be any payment to such estate of any sums which, if paid, would escheat. This provision shall not apply to any insurance which matured prior to August 1, 1946.

§ 8.90 *Payment to estate of beneficiary.* If the designated beneficiary of National Service life insurance maturing on or after August 1, 1946, is entitled to settlement in one sum but dies before receiving payment, or has elected payment in monthly installments under option 2, 3, or 4, and dies before receiving all of the installments due and payable thereunder, the present value of the remaining unpaid installments certain shall be payable to the estate of such beneficiary: *Provided,* That, in no event shall there be any payment to such estate of any sum which, if paid, would escheat.

§ 8.91 *Payment to contingent beneficiary.* (a) If the principal beneficiary of National Service life insurance maturing on or after August 1, 1946, not entitled to a lump-sum settlement survives the insured and dies after payment has commenced but before all installments certain have been paid, the remaining unpaid installments certain shall be paid to the surviving contingent beneficiary as they become due, unless the insured has selected a lump-sum settlement for the contingent beneficiary. In that event, the present value of the remaining unpaid installments certain shall be paid to the contingent beneficiary in one sum, unless such contingent beneficiary elects to continue to receive the remaining unpaid installments certain as they become due and payable.

(b) If the principal beneficiary of National Service life insurance maturing on or after August 1, 1946, does not survive the insured or if the principal beneficiary not entitled to a lump-sum settlement survives the insured but dies before payment has commenced, the insurance shall be paid to the contingent beneficiary in accordance with the provisions of § 8.77.

§ 8.92 *Election of payments on matured endowments.* The insured under a National Service life insurance policy issued on the endowment plan may, at the date of the maturity as an endowment, elect to receive payment in monthly installments under option 2 in lieu of payment in one sum. He shall have the right to designate the beneficiary or beneficiaries to receive any remaining unpaid installments at his death. If the insured dies before receiving all such monthly installments and no designated beneficiary survives, the present value of the remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat. If the designated beneficiary of a matured endowment survives the insured the present value of any remaining unpaid installments shall be paid to such beneficiary in one sum, unless the insured or such beneficiary has elected to continue the installments under the option selected by the insured for payment of the endowment.

OPTIONAL SETTLEMENTS FOR MINORS AND INCOMPETENTS

§ 8.93 *Selection of optional settlements for minors and incompetents.* The National Service Life Insurance Act of 1940, as amended by Public Law 589, 79th Congress, approved August 1, 1946, provides that: "When an optional mode of settlement of insurance heretofore or hereafter matured is available to a beneficiary who is a minor or incompetent, such option may be exercised by his fiduciary, person qualified under Public Law 373, Seventy-second Congress, February 25, 1933 (47 Stat. 907; 25 U. S. C. 14), or person recognized by the Administrator as having custody of the person or the estate of such beneficiary, and the obligation of the United States under the insurance contract shall be fully satisfied by payment of benefits in accordance with the mode of settlement so selected."

TOTAL DISABILITY INCOME PROVISIONS

§ 8.95 *Authority for the total disability income provision provided in the National Service Life Insurance Act of 1940, as amended August 1, 1946.* The total disability income provisions for National Service life insurance authorized by section 602 (v) of the National Service Life Insurance Act, 1940, as amended August 1, 1946, is subject in all respects to the provisions of the National Service Life Insurance Act, 1940, or any amendments thereto, and all regulations under the National Service Life Insurance Act now in force or hereafter adopted, all of which together with the insured's application, report of physical examination, tender of preminum, and the total disability income provision shall constitute the contract.

§ 8.96 *Application for total disability income provision and application for reinstatement thereof.* (a) Application for the total disability income provision under National Service Life Insurance, authorized by section 602 (v) of the National Service Life Insurance Act of 1940, as amended August 1, 1946, and the report of physical examination should be on such forms as may be prescribed by the Veterans' Administration, but any statement in writing sufficient to identify the applicant and the amount of insurance applied for, together with a satisfactory report of a physical examination and remittance to cover the first monthly premium will be sufficient as an application for the total disability income provision. Total disability insurance with benefits at the rate of $5 per month will be granted for each $1,000 of

National Service Life Insurance in force in full multiples of $500, but not to exceed the amount of life insurance, other than extended insurance, in force under the policy at the time of the application, upon compliance with the above requirements: *Provided,* The applicant is in good health: *Provided further,* That in any case in which the applicant while not totally disabled and prior to January 1, 1950, furnishes proof satisfactory to the Administrator that his inability to furnish proof of good health is the result of an injury or disability actually service incurred between October 8, 1940, and September 2, 1945, both dates inclusive, the requirement of proof of good health shall be waived.

(b) A total disability income provision which is lapsed may be reinstated if the insured meets the same requirements as those for reinstatement of the policy to which the total disability income provision is attached; except that in no event shall the requirement of a health statement or other medical evidence be waived in connection with the reinstatement of the total disability income provision. (Secs. 601–618, 54 Stat. 1008–1014, secs. 1–16, 60 Stat. 781–789; 38 U. S. C. 512d, 801–818)

§ 8.97 *Effective date of total disability income provision authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946.* The total disability income provision will be made effective as follows:

(a) If the National Service life insurance policy and the total disability income provision are applied for at the same time and all requirements are complied with, the total disability income provision shall, except as provided in paragraph (b) of this section be effective as of the same date the policy became effective.

(b) If the National Service life insurance policy is dated back, or has been previously issued, and the application is made on other than a due date of the monthly premium on the policy and all requirements are complied with, the total disability income provision shall be effective as of the last prior monthly premium due date.

§ 8.98 *Total disability income provision for National Service Life Insurance authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946.* The total disability income provision for National Service Life Insurance authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946, is set forth in VA Form 9–1667, "National Service Life Insurance Total Disability Income Provision." (Secs. 601–618, 54 Stat. 1008–1014, secs. 1–16, 60 Stat. 781–789; 38 U. S. C. 512d, 801–818)

§ 8.99 *Basic rates.* The following basic rates are promulgated for the inclusion of the disability income provision in a National Service life insurance policy:

ADDITIONAL PREMIUM PER $1,000 OF INSURANCE

Age	5-yr. term—OL—End. 60-End. 65				20-payment life			
	Mo.	Qr.	S-A.	A.	Mo.	Qr.	S-A.	A.
15	$0.16	$0.48	$0.95	$1.89	$0.24	$0.72	$1.43	$2.84
16	.16	.48	.95	1.89	.24	.72	1.43	2.84
17	.16	.48	.95	1.89	.24	.72	1.43	2.84
18	.16	.48	.95	1.89	.25	.75	1.49	2.96
19	.17	.51	1.01	2.01	.25	.75	1.49	2.96
20	.17	.51	1.01	2.01	.26	.78	1.55	3.08
21	.18	.54	1.07	2.13	.26	.78	1.55	3.08
22	.19	.57	1.13	2.25	.27	.81	1.61	3.20
23	.19	.57	1.13	2.25	.27	.81	1.61	3.20
24	.20	.60	1.19	2.37	.28	.84	1.67	3.31
25	.21	.63	1.25	2.49	.28	.84	1.67	3.31
26	.21	.63	1.25	2.49	.29	.87	1.73	3.43
27	.22	.66	1.31	2.60	.30	.90	1.79	3.55
28	.23	.69	1.37	2.72	.30	.90	1.79	3.55
29	.24	.72	1.43	2.84	.31	.93	1.85	3.67
30	.25	.75	1.49	2.96	.31	.93	1.85	3.67
31	.25	.75	1.49	2.96	.32	.96	1.91	3.79
32	.26	.78	1.55	3.08	.32	.96	1.91	3.79
33	.28	.84	1.67	3.31	.33	.99	1.97	3.91
34	.29	.87	1.73	3.43	.33	.99	1.97	3.91
35	.30	.90	1.79	3.55	.34	1.02	2.03	4.03
36	.31	.93	1.85	3.67	.35	1.05	2.09	4.14
37	.32	.96	1.91	3.79	.35	1.05	2.09	4.14
38	.34	1.02	2.03	4.03	.36	1.08	2.15	4.26
39	.35	1.05	2.09	4.14	.36	1.08	2.15	4.26
40	.37	1.11	2.21	4.38	.37	1.11	2.21	4.38
41	.39	1.17	2.33	4.62	.39	1.17	2.33	4.62
42	.41	1.23	2.44	4.85	.41	1.23	2.44	4.85
43	.43	1.29	2.56	5.09	.43	1.29	2.56	5.09
44	.45	1.35	2.68	5.33	.45	1.35	2.68	5.33
45	.47	1.41	2.80	5.56	.47	1.41	2.80	5.56
46	.49	1.47	2.92	5.80	.49	1.47	2.92	5.80
47	.52	1.56	3.10	6.16	.52	1.56	3.10	6.16
48	.55	1.65	3.28	6.51	.55	1.65	3.28	6.51
49	.57	1.71	3.40	6.75	.57	1.71	3.40	6.75
50	.60	1.80	3.58	7.10	.60	1.80	3.58	7.10
51	.63	1.89	3.76	7.46	.63	1.89	3.76	7.46
52	.67	2.01	4.00	7.93	.67	2.01	4.00	7.93
53	.70	2.09	4.17	8.29	.70	2.09	4.17	8.29
54	.73	2.18	4.35	8.64	.73	2.18	4.35	8.64
55	.77	2.30	4.59	9.12	.77	2.30	4.59	9.12
56	.81	2.42	4.83	9.59	.81	2.42	4.83	9.59
57	.85	2.54	5.07	10.06	.85	2.54	5.07	10.06
58	.89	2.66	5.31	10.54	.89	2.66	5.31	10.54
59	.94	2.81	5.61	11.13	.94	2.81	5.61	11.13

Age	20-year endowment				30-payment life			
	Mo.	Qr.	S-A.	A.	Mo.	Qr.	S-A.	A.
15	$0.07	$0.21	$0.42	$0.83	$0.19	$0.57	$1.13	$2.25
16	.07	.21	.42	.83	.19	.57	1.13	2.25
17	.07	.21	.42	.83	.19	.57	1.13	2.25
18	.07	.21	.42	.83	.19	.57	1.13	2.25
19	.07	.21	.42	.83	.20	.60	1.19	2.37
20	.08	.24	.48	.95	.20	.60	1.19	2.37
21	.08	.24	.48	.95	.20	.60	1.19	2.37
22	.09	.27	.54	1.07	.21	.63	1.25	2.49
23	.09	.27	.54	1.07	.21	.63	1.25	2.49
24	.10	.30	.60	1.18	.22	.66	1.31	2.60
25	.10	.30	.60	1.18	.22	.66	1.31	2.60
26	.11	.33	.66	1.30	.23	.69	1.37	2.72
27	.12	.36	.72	1.42	.23	.69	1.37	2.72
28	.13	.39	.78	1.54	.24	.72	1.43	2.84
29	.14	.42	.83	1.66	.24	.72	1.43	2.84
30	.15	.45	.89	1.78	.25	.75	1.49	2.96
31	.16	.48	.95	1.89	.25	.75	1.49	2.96
32	.18	.54	1.07	2.13	.26	.78	1.55	3.08
33	.19	.57	1.13	2.25	.28	.84	1.67	3.31
34	.21	.63	1.25	2.49	.29	.87	1.73	3.43
35	.23	.69	1.37	2.72	.30	.90	1.79	3.55
36	.25	.75	1.49	2.96	.31	.93	1.85	3.67
37	.28	.84	1.67	3.31	.32	.96	1.91	3.79
38	.30	.90	1.79	3.55	.34	1.02	2.03	4.03
39	.34	1.02	2.03	4.03	.35	1.05	2.09	4.14
40	.37	1.11	2.21	4.38	.37	1.11	2.21	4.38
41	.39	1.17	2.33	4.62	.39	1.17	2.33	4.62
42	.41	1.23	2.44	4.85	.41	1.23	2.44	4.85
43	.43	1.29	2.56	5.09	.43	1.29	2.56	5.09
44	.45	1.35	2.68	5.33	.45	1.35	2.68	5.33
45	.47	1.41	2.80	5.56	.47	1.41	2.80	5.56
46	.49	1.47	2.92	5.80	.49	1.47	2.92	5.80
47	.52	1.56	3.10	6.16	.52	1.56	3.10	6.16
48	.55	1.65	3.28	6.51	.55	1.65	3.28	6.51
49	.57	1.71	3.40	6.75	.57	1.71	3.40	6.75
50	.60	1.80	3.58	7.10	.60	1.80	3.58	7.10
51	.63	1.89	3.76	7.46	.63	1.89	3.76	7.46
52	.67	2.01	4.00	7.93	.67	2.01	4.00	7.93
53	.70	2.09	4.17	8.29	.70	2.09	4.17	8.29
54	.73	2.18	4.35	8.64	.73	2.18	4.35	8.64
55	.77	2.30	4.59	9.12	.77	2.30	4.59	9.12
56	.81	2.42	4.83	9.59	.81	2.42	4.83	9.59
57	.85	2.54	5.07	10.06	.85	2.54	5.07	10.06
58	.89	2.66	5.31	10.54	.89	2.66	5.31	10.54
59	.94	2.81	5.61	11.13	.94	2.81	5.61	11.13

INSURANCE PROVIDED BY SPECIAL LEGISLATION

§ 8.100 *Insurance benefits authorized under section 602 (c) (3) of the act, as amended August 1, 1946.* Any person in the active service between October 8, 1940, and September 2, 1945, both dates inclusive, who, while in such service and while performing full military or naval duty, made written application for insurance which was denied solely because of his condition of health, and who thereafter during such period of active service shall have incurred a total and permanent disability in line of duty or died in line of duty, shall be deemed to have applied for and to have been granted insurance for such amount which, when added to any other insurance in force under the War Risk Insurance Act, as amended, the World War Veterans' Act, 1924, as amended, or the National Service Life Insurance Act of 1940, as amended, shall not in the aggregate exceed $10,000.

Total permanent disability as referred to herein is any impairment of mind or body, which had continuously rendered it impossible for the disabled person to follow any substantially gainful occupation from the date of incurrence of such disability to the date of death. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech, shall be deemed total and permanent disability for the purpose of insurance under this provision. The right to insurance under this provision may not be determined prior to the death of such person.

No rights, benefits or privileges, except the privilege of designating or changing the beneficiary, shall accrue to any such person during his lifetime; no policy or certificate of insurance shall be issued and no premiums shall be required for the purpose of continuing any such insurance in force.

Insurance when authorized under this provision shall be effective from the date such person applied for insurance while in the active service and shall be deemed to have been continued in force to the date of his death.

Upon the death of such person, insurance authorized under this provision shall be deemed to have matured and payment will be made to the party or parties entitled to payment and in the manner provided in the National Service Life Insurance Act of 1940, as amended August 1, 1946, and regulations issued pursuant thereto.

There shall be deducted from the proceeds of such insurance the amount of the premiums payable thereon from the date of application to date of total and permanent disability or to date of death, if total and permanent disabilty in line of duty was not incurred.

Payments of insurance benefits under this provision shall be made directly from the National Service Life Insurance Appropriation.

NATIONAL SERVICE LIFE INSURANCE APPROPRIATIONS

§ 8.102 *Crediting of premiums to and payment of benefits from National Service Life Insurance Appropriation.* All premiums collected for insurance granted or reinstated pursuant to the second sentence of section 602 (c) (2) of the act, as amended, or section 602 (v) (1) of the act, as amended (first proviso) shall be credited directly to the National Service life insurance appropriation.

Any payment of benefits on insurance granted or deemed to have been granted pursuant to the foregoing provisions of the act, as amended; section 602 (c) (3) of the act, as amended; section 602 (p) of the act, as amended (second sentence); and, any payment of benefits on insurance continued in force as provided in section 602 (m) (2) of the act, as amended, shall be made directly from the National Service life insurance appropriation.

ARMED FORCES LEAVE BONDS

§ 8.104 *Assignment of armed forces leave bonds for insurance purposes.* (a) Pursuant to authority contained in the Armed Forces Leave Act of 1946, approved August 9, 1946 (Pub. Law 704, 79th Cong. as amended by Pub. Law 254, 80th Cong., approved July 26, 1947) any bond issued thereunder to a person holding National Service life insurance (or United States Government life insurance) may be assigned by such person to the Veterans' Administration for the purpose of making payments on such insurance as follows:

(1) Tender of premiums on existing insurance.

(2) Tender of premiums in connection with application for new insurance.

(3) Tender of premiums in connection with application for reinstatement of lapsed insurance.

(4) Payment of the difference in reserve when converting term insurance or when changing from one permanent plan to another having a higher reserve value.

(5) Payment wholly or in part, of any policy loan made prior to July 31, 1946, with interest to that date.

(b) The assignment will be for the full amount of the bond and the bondholder will be credited with an amount equal to the principal of the bond plus interest accruing to the end of the month in which the assignment is made. The date of assignment shall be the date of delivery of the bond on valid assignment to the Veterans' Administration. Where delivery is effected by mail, the date of assignment shall be the date of deposit in the mail, provided the envelope in which the bond is enclosed is properly addressed and delivered to the Veterans' Administration without return to the sender.

(c) The proceeds of the bond will be used to make payment on the insurance as directed by the insured, subject to the provisions of paragraph (a) of this section, and any balance over the amount necessary to make such payment will be refunded to the insured if living, otherwise to his estate, provided there will be no escheat.

(d) Provisions of the regulations and of the policy for cash value, paid-up insurance and extended term insurance, as well as those relating to policy loans, shall be applicable to any insurance on which payments have been made by assignment of Armed Forces leave bonds.

(e) The assignment may be made by the veteran's agent when acting under a special power of attorney or letter of authority containing definite and specific instructions regarding the use of the proceeds of the bond. If the veteran is incompetent the assignment may be made by his legal guardian or if there be no legal guardian and such veteran is hospitalized or receiving domiciliary care at a field station of the Veterans' Administration, or a State hospital or other institution, the assignment may be made by the manager of the field station or head of the State hospital or institution, as would be appropriate in the particular case, provided there are no other funds available for payment of the premiums. The manager of the field station or head of a State hospital or other institution may make such assignment only for the purpose of paying premiums on the existing insurance. The guardian may make the assignment for the purpose of paying premiums on the existing insurance, repaying a loan with interest on such insurance, and if authorized to do so by the court, when converting to a permanent plan.

(f) This section shall be effective as of September 2, 1947. (60 Stat. 963, P. L. 254, 80th Cong.; 37 U. S. C. 32 note)

NATIONAL SERVICE LIFE INSURANCE POLICY FORMS

§ 8.108 *Forms of policies.* The forms of policies of insurance, described in paragraphs (a) to (f) of this section, are hereby prescribed for use in granting National Service life insurance applied for in accordance with the provisions of the National Service Life Insurance Act of 1940, amendments and supplements thereto, and regulations promulgated pursuant thereto. Contracts of insurance authorized to be made in accordance with the terms and conditions set forth in the forms and policies described below, are subject in all respects to the provisions of the National Service Life Insurance Act of 1940, amendments and supplements thereto, and all regulations promulgated pursuant thereto, all of which together with the insured's application, required evidence of health, including physical examination, if required, and tender of premium shall constitute the contract. *Provided,* Any such policy that has been or is hereafter issued or reinstated under any provision of the National Service Life Insurance Act, as amended, which provides for premiums being credited to other than the National Service Life Insurance fund shall not participate in any gains or savings of such fund.

(a) VA Form 9–1660: Five Year Level Premium Term Policy.

(b) VA Form 9–1661: Ordinary Life Policy.

(c) VA Form 9–1662: Twenty Payment Life Policy.

(d) VA Form 9–1663: Thirty Payment Life Policy.

(e) VA Form 9–1664: Twenty Year Endowment Policy.

(f) VA Form 9–1665: Endowment Policy.

PART 10—ADJUSTED COMPENSATION

ADJUSTED COMPENSATION; GENERAL

PAYMENTS

AUTHORITY: §§ 10.0 to 10.53 issued under 43 Stat. 124; 38 U. S. C. 616: Interpret secs. 401, 501, 502, 601–603, 607, 43 Stat. 125, 126, 128–130, secs. 3 (a), 13, 44 Stat. 627, 630, secs. 2, 4, 5, 45 Stat. 947–949, secs. 1, 2 (a), 2 (b), 3, 47 Stat. 724, 725; 38 U. S. C. 616, 618, 621, 622, 623, 631, 640, 642, 647a, 649, 661, 662, 663, 667.

ADJUSTED COMPENSATION; GENERAL

§ 10.0 *Adjusted service pay entitlement.* A veteran entitled to adjusted service pay is one whose adjusted service credit does not amount to more than $50 as distinguished from a veteran whose adjusted service credit exceeds $50 and who therefore is entitled to an adjusted service certificate.

§ 10.1 *Issuance of duplicate adjusted service certificate without bond.* If the veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, without bad faith, has not received such certificate, or if prior to receipt by the veteran such certificate was destroyed wholly or in part or was so defaced as to impair its value, or, if after delivery it was partially destroyed or defaced so as to impair its value but can be identified to the satisfaction of the Administrator, a duplicate adjusted service certificate will be issued upon application and a bond of indemnity will not be required: *Provided,* That if the adjusted service certificate was destroyed in part or so defaced as to impair its value, the veteran or person entitled to payment thereon will be required to surrender to the Veterans' Administration the original certificate or so much thereof as may remain.

§ 10.2 *Evidence required of loss, destruction or mutilation of adjusted service certificate.* The veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, or the person entitled to payment thereon will be required to furnish evidence of the non-receipt of the adjusted service certificate, or of its receipt in a mutilated or defaced condition, or of the loss or destruction in whole or in part or defacement of the certificate after its receipt, as the case may be. The evidence must be sufficient to establish to the satisfaction of the Administrator that neither the veteran nor the person entitled to payment thereon, or any person for or on their behalf, received the adjusted service certificate, or that at the time of its receipt it was mutilated or defaced to such an extent as to impair its value, or that after receipt of the certificate it was lost or destroyed in whole or in part or defaced, but without bad faith on the part of the veteran, and that every effort has been made to recover the lost certificate. Unless determination is otherwise made by the Administrator the evidence must be in the form of a written statement sworn to by the veteran or person entitled to payment thereon and witnessed by at least two persons who shall state, under oath, that they personally know the affiant, that they have read his or her statement and that it is true to the best of their knowledge and belief. These statements should be supplemented by affidavits of any persons having personal knowledge of additional facts and circumstances concerning the matter, and the Administrator may require any additional evidence deemed necessary.

§ 10.3 *Issuance of duplicate adjusted service certificate with bond.* An indemnity bond will be required as a prerequisite to the issuance of a duplicate adjusted service certificate in all cases where the certificate was lost after receipt by the veteran, or after receipt by the veteran was defaced or mutilated and cannot be identified to the satisfaction of the administrator: *Provided,* The loss, defacement, or mutilation was without bad faith on the part of the veteran or the person entitled to payment thereon. The bond must be in the manner and form prescribed by the Veterans' Administration and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Administrator, with condition to indemnify and save harmless the United States from any claim on account of such certificate. If the certificate was defaced or mutilated the veteran or person entitled to payment thereon will be required to surrender to the Veterans' Administration the certificate or so much thereof as may remain.

§ 10.4 *Loss, destruction or mutilation of adjusted service certificate while in possession of Veterans' Administration.* A new adjusted service certificate will be issued without bond in lieu of the certificate which has been lost or destroyed, or has been mutilated, defaced or damaged so as to impair its value, while in possession of the Veterans' Administration.

§ 10.15 *Designation of more than one beneficiary under an adjusted service certificate.* A veteran to whom an adjusted service certificate has been issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act may name more than one beneficiary to receive the proceeds of his adjusted service certificate, and may from time to time with the approval of the Administrator change such beneficiaries. The designated beneficiaries shall share equally unless otherwise specified by the veteran. Wherever the word "beneficiary" appears in the law and Veterans' Administration regulations it shall be interpreted to include beneficiaries.

§ 10.16 *Conditions requisite for change in designation of beneficiary.* A change of beneficiary of an adjusted service certificate to be valid must be made:

(a) By notice signed by the veteran, or his duly authorized agent, and delivered or properly mailed to the Veterans' Administration during the lifetime of the veteran. Such change shall not take effect until approved by the Administrator and after such approval the change shall be deemed to have been made as of the date the veteran signed said written notice and change, whether the veteran be living at the time of said approval or not.

(b) Or by last will and testament of the veteran, duly probated. Such change shall not be effective until received by the Veterans' Administration and approved by the Administrator and after such approval the change shall be deemed to have been made as of the date of death of the veteran: *Provided,* That a change of beneficiary signed subsequent to the date upon which the will was executed and delivered in accordance with paragraph (a) of this section shall if approved in accordance with regulations

take precedence over the designation by will.

Provided however, That any payment made to a beneficiary of record, before notice of change of beneficiary has been received in the Veterans' Administration and approved by the Administrator, shall not be made again to the changed beneficiary.

§ 10.17 *Designation of beneficiary subsequent to cancellation of previous designation.* The designation of a beneficiary made subsequent to the cancellation of a previous designation of beneficiary, shall be considered as a change in beneficiary, and shall be subject to the approval of the Administrator and subject to the conditions and requirements respecting change in beneficiary as outlined in § 10.16.

§ 10.18 *Approval of application for change of beneficiary heretofore made.* Any application for a change of beneficiary heretofore made may be approved if it meets the requirements set out in §§ 10.16 and 10.17.

§ 10.20 *"Demand for payment" certification.* Certification to the execution of "demand for payment" forms appearing on the reverse side of adjusted service certificates issued pursuant to the World War Adjusted Compensation Act, as amended, is required in accordance with instructions printed on said forms. Such certification if made in the United States or possessions will be accepted if made by and bearing the official seal of a United States postmaster, an executive officer of an incorporated bank or trust company, notary public, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia or in a Federal judicial district of the United States. If the demand for payment be executed in a foreign country, the same shall be certified by an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where execution of demand is made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the demand for payment was authorized to administer oaths in the place where certification was made.

§ 10.22 *Payment to estate of decedent.* Wherever the face value of an adjusted service certificate, issued pursuant to the World War Adjusted Compensation Act, as amended, becomes payable to the estate of any decedent and the amount thereof is not over $500 and an administrator has not been or is not to be appointed, such amount will be paid to such person or persons as would, under the laws of the State of residence of the decedent, be entitled to his personal property in case of intestacy.

§ 10.24 *Payment of death claim on lost, destroyed or mutilated adjusted service certificate with bond.* If the veteran named in an adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if, after receipt by the veteran, the adjusted service certificate was lost, destroyed, or so defaced as to impair its value and cannot be identified to the satisfaction of the Administrator of Veterans' Affairs, the person entitled to payment thereon will be required to furnish an indemnity bond in the manner and form prescribed by the Veterans' Administration and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Administrator of Veterans' Affairs with condition to indemnify and save harmless the United States from any claim on account of such certificate, before payment will be made of the proceeds of the certificate and a duplicate adjusted service certificate will not be issued.

§ 10.25 *Payment of death claim on adjusted service certificate without bond.* If the veteran named in the adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if the certificate was lost or destroyed wholly or in part or was so defaced as to impair its value prior to receipt by the veteran, or was partially destroyed or defaced after receipt by the veteran, but can be identified to the satisfaction of the Administrator of Veterans' Affairs, payment will be made of the proceeds of the certificate, a bond of indemnity will not be required, and a duplicate adjusted service certificate will not be issued: *Provided,* The person entitled to payment thereon surrenders the defaced or mutilated certificate or so much thereof as may remain.

§ 10.27 *Definitions.* For the purpose of §§ 10.28 to 10.47, the word "act" as used herein refers to the World War Adjusted Compensation Act, as amended; the word "Veteran" refers to that term as defined in section 2 of title I of said act; the word "Director" refers to the Administrator of Veterans' Affairs.

§ 10.28 *Proof of death evidence.* Evidence required in establishing proof of death under the act, as amended, shall conform with the requirements set forth in the regulations of the Veterans' Administration.

§ 10.29 *Claims for benefits because of elimination of preferred dependent.* A dependent, in subsequent position in the order of preference as defined in section 601 of title VI of the act, as amended, who makes claim for the benefits of the act in consequence of the death of a dependent who made application and who stood in preferential position as defined in section 601 of the act, as amended, shall be required to furnish, in support of such claim, proof of death of said dependent. Proof of death of said dependent shall be in accordance with the requirements for proof of death as outlined in the regulations of Veterans' Administration. A dependent who makes claim for the benefits of the act because of remarriage of a widow who did not make and file application before remarriage shall be required to furnish in support of such claim proof of remarriage of said widow. Proof of remarriage of said widow shall be in accordance with the requirements for proof of marriage as outlined in regulations of the Veterans' Administration.

§ 10.30 *Proof of remarriage.* A dependent who is receiving payments under section 601 of title VI of the act, as amended, and who remarries after making and filing application, shall be required to furnish proof of remarriage in accordance with the requirements for proof of remarriage as outlined in regulations of the Veterans' Administration.

§ 10.31 *Dependency of mother or father.* Claims of a mother or father for the benefits to which either may be entitled under the World War Adjusted Compensation Act, as amended, shall be supported by a statement of fact of dependency made under oath by the claimant and witnessed by two persons.

§ 10.32 *Evidence of dependency.* Evidence of a whole or entire dependency shall not be required. The mother or father shall be considered dependent for the purposes of the act when it is established as a fact that the mother or father of a deceased veteran did not have sufficient means from all sources for a reasonable livelihood at the time of the death of the veteran or at any time thereafter and on or before January 2, 1935. In those cases where because of continued and unexplained absence for seven years the veteran is declared deceased under section 312 (a) of the act as amended May 29, 1928, the mother or father shall be considered dependent when it is established that the mother or father did not have sufficient means from all sources for a reasonable livelihood at the beginning of such 7-year period or at any time thereafter and before the expiration of such period.

§ 10.33 *Determination of dependency.* A determination of the existence of the alleged dependency will be made upon consideration of all facts relating to dependency, and upon such investigation of such facts as may be warranted. The following facts as existing at the time of the death of the veteran, or at any time thereafter and on or before January 2, 1935, or where it is established that the veteran is deceased as provided in section 312 (a), at the beginning of such 7-year period or at any time thereafter and before the expiration of such period, shall be taken into consideration in determining dependency in a given case:

(a) Claimant's age.

(b) Amount contributed to claimant by deceased veteran.

(c) Value of all real and personal property owned by claimant.

(d) Total monthly expenses of the claimant and total monthly income.

(e) The fact that claimant did or did not receive an allotment of pay or allowance during the veteran's military or naval service.

(f) Incapability of self-support by reason of mental or physical defect.

(g) Any other fact or facts pertinent to the determination of dependency.

§ 10.34 *Proof of age of dependent mother or father.* The mother or father of a veteran to be entitled to the pre-

sumption of dependency within the meaning of section 602 (c) or section 312 (c) of the act, as amended, shall be required to submit proof of age in accordance with the requirements as set forth in regulations of the Veterans' Administration.

§ 10.35 *Claim of mother entitled by reason of unmarried status.* Claim of a mother for the benefits to which she may be entitled by reason of her unmarried status as outlined in section 202 (c) or section 312 (c) 3 of the act, as amended, shall be supported by a statement of fact, under oath, of such status, together with one of the following:

(a) Certified copy of public record of death of the husband.

(b) Certified copy of court record of divorce decree.

§ 10.36 *Proof of marital cohabitation under section 602 or section 312 of the act.* In order to prove marital cohabitation within the meaning of that term as used in section 602 (a) or section 312 (c) 1 of the act, as amended, claimant shall be required to establish:

(a) A valid marriage, such marriage to be shown by the best evidence obtainable in accordance with the provisions of regulations of the United States Veterans' Administration.

(b) The fact of living together as man and wife, with such fact to be established by:

(1) Statement of the widow or widower showing that he or she and the veteran lived together as man and wife and also showing the place or places of residence during such marital cohabitation and the approximate time of such residence; or

(2) Statement of two competent persons showing that they personally knew the claimant and veteran and that they had personal knowledge that said claimant and veteran lived together as man and wife and were recognized as such.

(c) The fact that the marital status existed at the time of the death of the veteran or where it is established that the veteran is deceased, as provided in section 312 (a) 1 of the act, as amended, at the beginning of such 7-year period, such fact to be established by:

(1) Statement by claimant that he or she and the veteran had not been divorced and that there had been no annulment of the marriage.

(2) Statement of claimant that he or she was not remarried at the time of making application.

(3) Statement of two competent persons showing that they personally knew the claimant and the veteran; that they personally knew of the marriage relationship between claimant and veteran; that to the best of their knowledge and belief there had been no divorce and no annulment of the marriage and that claimant was not remarried at the time of making and filing application.

§ 10.37 *Claim of widow not living with veteran at time of veteran's death.* If a veteran and widow were not living together at the time of the death of the veteran the widow will be required to establish:

(a) That the living apart was not due to her willful act, and

(b) Actual dependency upon the veteran at the time of his death or at any time thereafter and before January 2, 1935.

(1) A determination of what shall constitute a willful act, as used in section 602 (a) of the act, as amended, will be made upon consideration of all facts relating to such act and upon such investigation of such facts as may be deemed warranted. For the purpose of this section, the fact that a veteran lived apart from the widow because of any act by the widow involving desertion or moral turpitude will be construed as the willful act of the widow. Cause of separation and time and duration of separation at the time of the death of the veteran shall be taken into consideration in determining a willful act.

(2) A determination of the existence of actual dependency will be made under the criteria set forth in §§ 10.32 and 10.33 with respect to dependency of a mother or father.

§ 10.38 *Proof of age of veteran's child.* A child of a veteran shall be required to submit proof of age in accordance with the requirements set forth in the regulations of the United States Veterans' Administration.

§ 10.39 *Mental or physical defect of child.* If claim is made under section 602 (b), (2), of title IV of the act as amended, alleging that a child over 18 years of age was incapable of self-support at the death of the veteran or that he became incapable of self-support subsequent to the death of the veteran but on or before January 2, 1935, or that he was incapable of self-support at the disappearance of the veteran or became incapable of self-support after the disappearance of the veteran and before the expiration of the period of seven years mentioned in section 312 (c), (2), of the act, it will be necessary to furnish evidence as to the mental or physical condition of the child at the time it is alleged he became incapable of self-support.

(a) Where incapability of self-support by reason of the mental defect of the child is alleged, the following evidence will be required:

(1) Certified copy of court order or decree declaring the child to be mentally incompetent; or

(2) A report of a licensed physician setting forth all of the facts as to the child's mental condition; or

(3) The affidavit of the person having custody and control of the child, setting forth all of the available information as to the child's mental condition. The affidavit must be substantiated by two competent disinterested persons who shall state that they personally know the child, that they have read the affidavit made by the person having custody and control of the child, and that the information therein set forth is true to the best of their knowledge and belief.

(b) Where incapability of self-support by reason of physical defect of the child is alleged, the following evidence will be required:

(1) Report of a licensed physician setting forth all of the facts as to the child's physical condition; and

(2) Affidavit of the child regarding his physical condition and the affidavits of two competent disinterested persons, who shall state that they personally know the claimant, that they have read his affidavit and that the same is true to the best of their knowledge and belief.

§ 10.40 *Payment on account of minor child.* Payments to a minor child shall be made to the legally constituted guardian, curator or conservator, or to the person found by the director to be otherwise legally vested with the care of the child.

§ 10.41 *Definition of "child".* The term "child" as used in these regulations includes:

(a) A legitimate child;

(b) A child legally adopted;

(c) A stepchild, if a member of the veteran's household at the time of the death of the veteran, or

(d) An illegitimate child, but as to the father only, if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support or has been judicially decreed to be the putative father of such child.

§ 10.42 *Claim of child other than legitimate child.* A claim of a child legally adopted by the veteran upon whose service the claim is based shall be supported by a certified copy of the court record of such adoption. A claim of a stepchild of a veteran shall be supported by an affidavit of his or her legal guardian, stating that at the time of the death of the veteran said stepchild was a member of the veteran's household. The fact, as stated in such affidavit, and the signature of the guardian thereto, shall be attested by the court having jurisdiction over the guardian, or by two competent persons to whom the child was personally known at the time of the death of the veteran. A claim of an illegitimate child of a veteran upon whose service claim is based, shall be supported by:

(a) A statement by the veteran in writing acknowledging his parentage of such child; or

(b) Certified copy of order or decree of a court ordering the veteran to contribute to such child's support; or

(c) Certified copy of a decree of a court holding the veteran to be the putative father of such child.

§ 10.43 *Claim by guardian of child of veteran.* A claim made by a legal guardian on behalf of his or her ward, a child of a veteran, shall be supported by an affidavit of said guardian, in the capacity of guardian, setting forth the names, ages, and addresses of all living children of the deceased veteran, or, if there be no living child other than the claimant child, statement of that fact shall be made. The signature of the guardian to such required affidavit shall be attested by the court having jurisdiction of the guardian and ward, or by two competent persons to whom the child is personally known.

§ 10.44 *Evidence required to support claim of mother or father.* The term "mother" and "father" as referred to in the order of preference as outlined in section 601 of the act, as amended, includes stepmothers, stepfathers, mothers and fathers through adoption, and per-

sons who, for a period of not less than one year, have stood in the place of a mother or father to the veteran at any time prior to the beginning of his service. In addition to the evidence of dependency required from a natural mother or father, a claim of a stepmother or stepfather shall be supported by evidence of marriage to the natural parent of the veteran. This evidence shall be in accordance with the requirements of proof of marriage as set forth in regulations of the United States Veterans' Administration. A claim of a mother or father through adoption shall be supported by a certified copy of the court record of such adoption. A claim by a person who claims to have stood in the place of a mother or father shall be supported by evidence of such relationship satisfactory to the Veterans' Administration. Such evidence shall comprise:

(a) An affidavit of the claimant containing a complete detailed statement of the alleged relationship and

(b) Affidavits of two competent witnesses to whom claimant was personally known at the time of the death of the veteran, said witnesses certifying to the truth of the statement as made by the claimant.

§ 10.45 *Definition of "widow."* The term "widow" as used in these regulations includes widower.

§ 10.46 *Authentication of statements supporting claims.* All statements, except those of licensed examining physicians under § 10.39 (a) (2) and (b) (1), required by §§ 10.28 to 10.44 shall be subscribed and sworn to before an officer vested with authority to administer oaths, in the place where such statements are made. Signatures executed in foreign countries or places shall be certified by an American consul, a recognized representative of an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where such statements are made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the signature was authorized to administer oaths in the place where certification was made.

§ 10.47 *Use of prescribed forms.* Statements required by these regulations should be submitted on forms provided by the United States Veterans' Administration, when conveniently available.

PAYMENTS

§ 10.50 *Section 601 and section 603 payments made on first day of calendar quarter.* Cash payments and the first installment of installment payments authorized in sections 601 and 603, respectively of title VI of the World War Adjusted Compensation Act, as amended, will be made as of the first day of the calendar quarter following the finding by the director that the applicant is a dependent entitled to the benefits of the act, but in no case shall any such payments be made before March 1, 1925: *Provided, however,* That payments authorized by section 608 of title VI of the act, as amended, shall be paid in a lump sum to the preferred dependent without reference to payments under section 603 of title VI of the act, as amended.

§ 10.51 *Payments to minor child.* Payments to minor child through legal guardian, natural guardian, or self. (See § 10.40.)

§ 10.52 *Duplication of payment prohibited.* Duplication of payments shall not be made in case of change of beneficiary. (See § 10.16.)

§ 10.53 *Payment on duplicate certificate.* Issuance of duplicate adjusted service certificates and payment of claims based upon lost, destroyed, or mutilated, adjusted service certificates. (See §§ 10.1 to 10.4 and 10.24 to 10.26, respectively.)

PART 11—LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATE

LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT

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APPLICATION FOR PAYMENT ON ACCOUNT OF ADJUSTED SERVICE CERTIFICATE UNDER THE ADJUSTED COMPENSATION PAYMENT ACT, 1936

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AUTHORITY: §§ 11.75 to 11.117 issued under 43 Stat. 124; 38 U. S. C. 616; interpret secs. 401, 501, 502, 601–603, 607, 43 Stat. 125, 126, 128–130, secs. 3 (a), 13, 44 Stat. 827, 830, secs. 2, 4, 5, 45 Stat. 947–949, secs. 1, 2 (a), 2 (b), 3, 47 Stat. 724, 725, 49 Stat. 1099; 38 U. S. C. 616, 618, 621, 622, 623, 631, 640, 642, 647a, 649, 661, 662, 663, 667, 686, 686a–c, 687, 687a–c, 688, 688a, b.

LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT

§ 11.75 *Certificates.* Adjusted service certificates are dated as of the 1st day of the month in which the applications were filed, but no certificates are dated prior to January 1, 1925. Loans on the security of such certificates may be made at any time after the date of the certificate. The fact that a certificate is stamped or marked "duplicate" does not destroy its value as security for a loan.

§ 11.76 *To whom loan may be made.* Only the veteran named in the certificate can lawfully obtain a loan on his adjusted service certificate and neither the beneficiary nor any other person than the veteran has any rights in this respect. The person to whom the loan is made must be known to the lending bank to be the veteran named in the certificate securing such note. The consent of the beneficiary is not required, the act providing that a loan on the security of the certificate may be made "with or without the consent of the beneficiary thereof." Loans may be made to veterans adjudged incompetent only through the guardians of such veterans and pursuant to specific order of the court having jurisdiction. Certified copy of court order must be submitted if note be presented for redemption by the Veterans' Administration.

§ 11.77 *By whom loans may be made.* Any national bank or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia, hereinafter referred to as any "bank," is authorized to loan to any veteran upon his promissory note secured by his Adjusted Service Certificate any amount not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate, but it is provided by amendment to the World War Adjusted Compensation Act dated February 27, 1931, that the loan value of any certificate shall at no time be less than 50 percent of the face value. Upon the making of such loan, the lending bank shall promptly notify the Veterans' Administration of the name of the veteran, the A–number shown immediately after the name, the number of the certificate, the amount, the rate of interest, and date of loan: However, this requirement may be waived by the Administrator of Veterans' Affairs.

§ 11.80 *Sale or discount of note by holding bank.* Any bank holding a note secured by an Adjusted Service Certificate may sell the note to any bank authorized to make a loan to a veteran and deliver the certificate to such bank. In case a note secured by an Adjusted Service Certificate is sold or transferred, the bank selling, discounting or rediscounting the note is required by law to notify the veteran promptly by mail at his last known post office address. No Adjusted Service Certificate is negotiable or assignable, or may serve as security for a loan, except as provided in section 502 of the World War Adjusted Compensation Act, as amended. Any negotiation, assignment or loan made in violation of section 502 of the World War Adjusted Compensation Act is void. In case of sale, discount or rediscount by the bank which made the loan, the note or notes should be accompanied by the affidavit required by § 11.85.

§ 11.81 *Rediscounts with Federal Reserve Banks.* Upon the endorsement of any bank, which shall be deemed a waiver of demand, notice and protest by such bank as to its own endorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by an Adjusted Service Certificate and held by a bank is made eligible for discount or rediscount by the Federal reserve bank of the Federal reserve district in which such bank is located, whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the endorsement of any other bank: *Provided,* That at the time of discount or rediscount such note has a maturity not in excess of nine months, exclusive of days of grace, and complies in all other respects with the provisions of the law, the regulations of the Federal Reserve Board and the regulations in this part.

§ 11.83 *Additional loans by reason of 50 percent loan value.* (a) It will be the policy of the Veterans' Administration to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Administrator of Veterans' Affairs. The Administrator shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest at the rate authorized by the World War Adjusted Compensation Act, as amended, up to the date of the check issued to the bank. If the veteran has not filed application for final settlement of his adjusted service certificate under the provisions of the Adjusted Compensation Payment Act, 1936, and demand is made upon the bank to present the note and certificate for redemption prior to the maturity date of the loan and during the lifetime of the veteran, interest will be payable up to the date the check is issued to the bank, or, if demanded by the bank, up to the maturity date of the loan.

(b) If, however, an application for final settlement is filed and the bank is notified to present the note and certificate to the Administrator and does so within fifteen days after the mailing of such notice interest will be payable to the date the check is issued to the bank. If the bank fails to forward the note and certificate within fifteen days after the mailing of the notice, interest shall be paid only up to the fifteenth day after the mailing of such notice.

§ 11.84 *Redemption because of veteran's death.* If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the Administrator, who shall pay to the bank, in full satisfaction of its claim the amount of the unpaid principal and unpaid interest, at the rate authorized by the World War Adjusted Compensation Act, as amended, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Administrator and fails to present the certificate and note to the Administrator within 15 days after the notice such interest shall be paid only up to the fifteenth day after such notice.

§ 11.85 *Condition requisite for redemption.* In order to be eligible for redemption by the Veterans' Administration, the note and certificate must be accompanied by an affidavit of a duly authorized officer (the capacity in which the officer serves must be shown) of the lending bank showing that the said bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation in respect of the loan, or any other loan made by the bank under the provisions of section 502 of the World War Adjusted Compensation Act, except the rate of interest specified in the section of the act cited; that the person who obtained the loan is known to the lending bank to be the person named in the Adjusted Service Certificate; and that notice required by § 11.77 was promptly given. In case the note was sold or discounted by the lending bank, there should be incorporated in the affidavit a statement that the veteran was notified promptly of the transfer by mail to his last known address. In case the note was resold or rediscounted by any other bank, affidavit shall be made by a duly authorized officer of such bank that proper notice of such resale or rediscount was promptly mailed to the veteran at his last known address. The proper execution of the appropriate affidavit on Form 6615 or 6615a will be considered as a compliance with the requirements of this section. A single affidavit setting forth the full particulars may be accepted to cover any number of veterans' notes submitted for redemption at one time. The affidavit must be executed before a judge of the United States court, a United States commissioner, a United States district attorney, a United States marshal, a collector of internal revenue, a collector of customs, a United States postmaster, a clerk of court of record under the seal of the court, an executive officer of an incorporated bank or trust company, under his official designation and the seal of the bank or trust company, or a notary public under his seal, or a diplomatic or consular officer of the United States, under his official seal.

DISPOSITION OF NOTES, SECURED BY ADJUSTED SERVICE CERTIFICATES REDEEMED FROM BANKS BY THE VETERANS' ADMINISTRATION UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT AS AMENDED

§ 11.88 *Cancelation of note.* When a veteran's note is redeemed by the Veterans' Administration, the note will be canceled and both the note and certificate will be retained in the files of the Veterans' Administration until such time as settlement is made.

§ 11.89 *Notification of veteran.* When a note is redeemed notification will be sent to the veteran at his last known address, advising him that the Veterans' Administration holds his note, and outlining the conditions governing repayment.

§ 11.91 *Repayment of loans.* Should the veteran so desire, he may repay the amount due on his note in full or in installments.

§ 11.93 *Failure to redeem.* (a) If the veteran fails to redeem his certificate before its maturity there will be deducted from the face value of the certificate the amount of the unpaid principal of the note of the veteran and the unpaid interest thereon through September 30, 1931.

(b) If the veteran failed to redeem his certificate and died prior to January 27, 1936, there will be deducted from the face value of the certificate the amount of the unpaid principal of the veteran's note and the unpaid interest thereon to the date of his death. If the veteran died on or after January 27, 1936, the amount to be deducted when making settlement will be the unpaid principal of the veteran's note and the unpaid interest thereon through September 30, 1931.

VETERANS' ADMINISTRATION LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

§ 11.96 *By whom loans may be made.* Loans will be made by the Veterans' Administration, Washington, D. C., to any veteran, upon his promissory note secured by his adjusted service certificate, in any amount in even dollars not less than $10 and not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate but at no time is the loan value less than fifty per centum of the face value.

§ 11.99 *Identification.* (a) Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification, if made in the United States or possessions, will be accepted if the certification is made by a United States postmaster or assistant postmaster over an impression of the post office cancelation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a member of the United States Senate or the House of Representatives, an officer,

over his official title, of a post, chapter, or other comparable unit of an organization recognized under section 500 of the World War Veterans' Act, 1924, as amended, or under Veterans' Regulation No. 10 (38 U. S. C. ch. 12), or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia, or in a Federal judicial district, of the United States. If the identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; *Provided*, There be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A manager of a Veterans' Administration facility is authorized to identify patients, members or employees of the facility over which he has charge. No identification will be made by any employee of the Veterans' Administration in his official capacity, other than by a manager of a facility as authorized above. However, such other employees of the Veterans' Administration as are specifically designated in writing to do so by the managers of regional offices, facilities or insular offices of the Veterans' Administration, or the head of an activity in central office, may identify applicants during official hours and upon the premises of the Veterans' Administration, such identifications by the employee so designated to be in his individual capacity and from his personal knowledge that the applicant is the person he claims to be. Official records on file with the Veterans' Administration may be used by the employee making such identification. No employee under the jurisdiction of the assistant administrator of finance in central office, or the finance activity of a field station of the Veterans' Administration will be so designated.

(b) Any veteran whose adjusted service certificate is held by the Veterans' Administration as security for a loan made on a note properly signed by such veteran, may be identified by comparison of the handwriting of his signature on his previous note with his signature on his note submitted for an additional loan, and the execution of the certificate of identification required above waived.

§ 11.100 *Form of note.* The form of note used in making loans secured by adjusted service certificates shall follow Form 1185.

§ 11.102 *Term of note.* All loans will be for a period of one year and if not paid will be automatically extended from year to year for periods of one year in the amount of the principal plus interest accrued to the end of the immediately preceding expired loan year, which total amount shall automatically become a new principal each year provided a loan may be paid off at any time by the payment of principal and accrued interest, but in no event will interest accruing after September 30, 1931, be deducted in final settlement of a certificate except as provided in § 11.93 (b).

§ 11.104 *Disposition of notes and certificates.* All notes and certificates shall be held in the custody of the Veterans' Administration, Washington, D. C.

APPLICATION FOR PAYMENT ON ACCOUNT OF ADJUSTED SERVICE CERTIFICATE UNDER THE ADJUSTED COMPENSATION PAYMENT ACT, 1936

§ 11.111 *Form of application.* Application must be made on Veterans' Administration Adjusted Compensation Form 1701.

§ 11.114 *Identification.* Before settlement is made on an Adjusted Service Certificate, the person applying therefor will be identified as the person identified to the settlement for which an application is made. If made in the United States or possessions, certification will be accepted if made by a United States postmaster or assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy or Marine Corps; commissioned officers of the Reserve Corps on active duty with Civilian Conservation Corps camps; a member of the United States Senate or the House of Representatives; an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under Veterans' Regulation No. 10 (38 U. S. C. Ch. 12), or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, possession, District of Columbia, or in a Federal judicial district, of the United States. If the identification is made in a foreign country, it will be certified by an American Consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made.

(a) Fingerprint impressions shall be required on the application and shall be imprinted thereon in the presence of the persons identifying the veteran. In the case of veterans who are mentally incapacitated and application is being executed by a representative of the veteran, the veteran's fingerprints will be obtained if possible. If this cannot be done, as also in the case of an individual whose fingers are all missing, a statement of explanation will be required.

§ 11.117 *Missing applications.* Where the records of the Veterans' Administration show that an application, disclosing an intention to claim the benefits of this act, has been filed and the application cannot be found, such application shall be presumed, in the absence of affirmative evidence to the contrary, to have been valid when originally filed, the determination as to the correctness of this assumption shall be made by the assistant administrator of finance.

PART 12—DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS

DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON STATION UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON STATION

Under Public No. 734, 75th Congress (38 U. S. C., 16j)

Sec.
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DISPOSITION OF PERSONAL FUNDS AND EFFECTS LEFT UPON PREMISES OF THE VETERANS' ADMINISTRATION BY NON-VETERAN PATIENTS, EMPLOYEES AND OTHER PERSONS, KNOWN OR UNKNOWN

12.15 Inventory of property.
12.16 Action on inventory and funds.
12.17 Unclaimed effects to be sold.
12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

Under Public Law 382, 77th Congress, December 26, 1941, Amending the Act of June 25, 1910 (24 U. S. C. 136)

12.19 Provisions of Public Law 382 (38 U. S. C. 17–17j).
12.20 Posting of notice provisions of Public Law 382.
12.21 Action upon death of veteran.
12.22 Disposition of personal property.
12.23 Recognition of valid claims against the General Post Fund.

AUTHORITY: §§ 12.0 to 12.23 issued under sec. 10, 52 Stat. 1192, 55 Stat. 868; 38 U. S. C. 16i, 17–17j, 17 note.

DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON STATION UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON STATION.

Under Public No. 734, 75th Congress (38 U. S. C. 16j)

§ 12.0 *Definitions.* (a) As used in respect to the disposition of property of veterans dying at Veterans' Administration hospitals or other field stations, or who are discharged or who elope, or are absent without leave therefrom, and in respect to property found thereat, the term "funds" means all types of United States currency and coin, checks payable to the decedent except checks drawn on the Treasurer of the United States which have never been negotiated, and includes deposits to the credit of the veteran in the account "Personal Funds of Patients," and each competent veteran will be so advised. The term "effects" means and embraces all other property

of every description, including insurance policies, certificates of stock, bonds and notes the obligation of the United States or of others, and all other papers of every character except checks drawn on the Treasurer of the United States, as well as clothing, jewelry and other forms of property, or evidences of interest therein. Checks drawn on the Treasurer of the United States which have never been negotiated will be returned to the issuing office for disposition.

(b) "Field stations" as used in §§ 12.1 to 12.13 includes hospitals, centers, homes, supply depots and other offices over which the Veterans' Administration has direct and exclusive administrative jurisdiction, and excludes State, county, city, private and contract hospitals and hospitals or other institutions operated by the United States through agencies other than the Veterans' Administration. At institutions other than field stations as herein defined funds or effects as defined in paragraph (a) of this section, will be disposed of under the laws governing such institutions, except that, if death occurs in a United States Naval Hospital the funds and effects will be for disposition under the laws of the State of the veteran's last legal domicile. In either event if the veteran died intestate without heirs or next of kin his personal property vests in the United States for the benefit of the General Post Fund under the provisions of §§ 12.19 to 12.23.

§ 12.1 *Designate cases; competent veterans.* (a) Each competent veteran now being cared for or who is hereafter admitted to receive care as such at a Veterans' Administration field station, unless it be detrimental to his health, will be requested and encouraged to designate on the prescribed Form 4–1170, Designation of Person to Receive Personal Effects, in duplicate, the person to whom he desires the Veterans' Administration to deliver his funds and effects in event of death. He may also designate an alternate to whom delivery will be made if the first designate fails or refuses to accept delivery. It should be clearly understood that the delivery of such funds or effects will constitute only a delivery of possession thereof, and such delivery is not intended to affect in any manner the title to such funds or effects or determine the person ultimately entitled to receive same from the person to whom delivery is made (hereinafter in these regulations termed the "designate"). The person designated may not be an employee of the Veterans' Administration unless such employee be the wife (or husband), child, grandchild, mother, father, grandmother, grandfather, brother or sister of the veteran. The veteran, or if he becomes incompetent his guardian, may in writing change or revoke such designation at any time. The information which said Form 4–1170 is intended to elicit with respect to living relatives of the veteran will be obtained in every case, and at that time the veteran's attention will be called to his agreement therein contained with respect to disposition of his property.

(b) Veterans will be encouraged to place in the custody of their relatives articles of little or no utility value to them during their period of care at a Veterans' Administration field station, and to retain in their possession only such funds and effects as are actually required and necessary for their immediate convenience.

§ 12.2 *Designate cases; incompetent veterans.* (a) An incompetent veteran will not be informed concerning the designation of a person to receive funds or effects; but if he has a guardian the guardian will be requested to make such designation of himself or another person to receive possession of the funds and effects upon the incompetent's death. The guardian will execute the same form of designation as a competent veteran but will sign same with the veteran's name "By_____, Guardian of his Estate".

(b) No effort will be made to obtain a designation by or on behalf of an incompetent veteran who has no guardian.

§ 12.3 *Deceased veterans' cases.* (a) Immediately upon the death or the absence without leave of any beneficiary at a field station, as defined in § 12.0 (b), a survey and inventory of the funds and effects of such beneficiary will be taken in the following manner:

(1) If the death or absence without leave occurred during hospitalization a complete, careful survey and inventory (Form 10–2687, Inventory Report of Personally-Owned Effects of Beneficiary) will be made under the supervision and in the presence of the ward physician, officer of the day, or the charge nurse, and the supply officer, deputy supply officer, clothing storekeeper or general storekeeper of all the personal effects (including those in the custody of the supply officer, jewelry being worn by the deceased person, or jewelry and other effects in pockets of clothing he may have been wearing), and all funds found and moneys on deposit in "Personal Funds of Patients." In the event death occurred during other than official working hours the officer of the day and/or the charge nurse will collect and inventory all funds and personal effects on the person of the deceased beneficiary and on the ward, will carefully, safeguard such property and, upon completion of the tour of duty, will turn the funds over to the manager or his designated representative and will deliver the effects to the supply officer.

(2) If the death or absence without leave occurred while the beneficiary was assigned to barracks, or while receiving hospitalization and at time of death or absence without leave any effects are in the barracks, a like survey and inventory will be made by the domiciliary officer, assistant domiciliary officer, company commander or company sergeant and the supply officer, deputy supply officer, clothing storekeeper or general storekeeper.

(3) The inventory report will be executed in triplicate, original and two copies. All will be signed by each employee making the inventory, and disposed of as hereinafter provided.

(4) Personally-owned clothing or other effects (such as tooth brushes, false teeth not containing gold, etc.,) which are unserviceable by reason of wear or tear or insanitary condition, and clothing that had been supplied by the Government, will not be included in this inventory; instead, the board, as constituted above, will list the unserviceable personally-owned articles on a separate list, describing briefly their condition, and will recommend their disposition in a separate report to the manager on Form 10–2687a, Inventory Report of Unserviceable Personally-owned Effects of Beneficiary. The manager, if approving this recommendation, will order destruction or utilization in occupational therapy, or as wipe rags, etc., of such unserviceable articles and, when they are so destroyed or utilized, will have entered on the papers the date and nature of the disposition. The completed papers will then be placed in the correspondence file of the beneficiary. Clothing that had been supplied by the Government will be reconditioned if possible and returned to stock for issue to other eligible beneficiaries. When Government-owned clothing cannot be reconditioned it will be disposed of as provided in Veterans' Administration supply procedures.

(5) When the nearest relative requests that the deceased beneficiary be clad for burial in clothing he personally owned, instead of burial clothing to be supplied under the undertaker's contract, such request will be honored. A receipt in such cases will be obtained from the undertaker, specifying the articles of clothing so used. Adjustment of the undertaker's bill in the case will correspondingly be made.

(6) In accomplishing such inventories, detailed description will be given of items of material value or importance, for example:

Watch; Yellow metal (make, movement and case number if available without damage to watch).
Ring; Yellow metal (probably gold plated or stamped 14 K, setting if any).
Discharge Certificate.
Adjusted Service Certificate; (Number).
Bonds or Stocks; (Name of company, registered or non-registered identifying number, recited par value, if any).
Bank Books or other asset evidence; (Name of bank or other obligor, apparent value, identifying numbers, etc.)
Clothing; (Brief description and statement of condition). Etc.

(b) Upon completion of the survey and inventory the effects will be turned over to the supply officer for safekeeping. Any funds found which apparently were the property of the deceased will be turned over to the manager, or his designated representative, who shall receipt therefor (Finance Form 4–1123, Receipt for Cash and Personal Checks), and deliver immediately to the agent cashier, who shall deposit same in the account "Personal Funds of Patients." If the funds include an unendorsed personal check this will be held by the agent cashier for safekeeping, pending disposition thereof.

§ 12.4 *Disposition of effects and fund to designate; exceptions.* (a) Upon authorization by the manager or his designated representative, all funds, as defined in § 12.0, and effects will be delivered or sent to the designate of the deceased veteran if request therefor be

made after death and within 90 days following the mailing of notice to such designate (see § 12.9 (a)), unless:

(1) The executor or administrator of the estate of the deceased veteran shall have notified the manager or his designated representative of his desire and readiness to receive such funds or effects, in which event the manager or his designated representative will authorize delivery of all funds and effects to such executor or administrator, upon receipt of appropriate documentary evidence of his qualifications and in exchange for appropriate receipts, or

(2) Subsequent to the naming of a designate the veteran became incompetent and his guardian revoked such designation, in which event the manager or his designated representative will deliver all funds and effects to his guardian in exchange for appropriate receipts subject to the limitation contained in paragraph (d) of this section, or

(3) Designate was the wife (or husband) of the veteran at the time of designation and information at the disposal of the field station indicates that she (or he) was thereafter divorced and the veteran was incompetent at or subsequent to the time of divorce, or

(4) Notwithstanding there is a designate, it is probable that title would pass to the United States under the provisions of §§ 12.19 to 12.23 issued pursuant to the act of June 25, 1910 (24 U. S. C. 136), as amended by the act of December 26, 1941 (38 U. S. C. 17–17j), or under the act of July 1, 1902 (24 U. S. C. 139), or would escheat to the United States under the act of August 12, 1935 (38 U. S. C. 450), or

(5) The manager or his designated representative determines that there is reasonable ground to believe that the transfer of such possession to the designate probably would be contrary to the interests of the person legally entitled to the personal property, or there are any other special circumstances raising a serious doubt as to the propriety of such delivery to the designate.

In any case in which the manager does not deliver the funds and effects, because of the provisions of subparagraphs (3), (4) and (5) of this paragraph, he will develop all facts and refer the matter to the chief attorney of the regional office having jurisdiction over the area where the hospital is located for advice as to the disposition which legally should be made of such funds and effects.

(b) The supply officer, when authorized by the manager or his designated representative, will deliver or ship the effects. If shipped at Government expense, the shipment shall be made in the most economical manner but in no case at a cost in excess of $10.00. If such expenses will exceed $10.00, the excess amount shall be paid by the consignee, either to the manager in advance, or to the carrier if it accepts the shipment without full prepayment of charges. There will be no obligation on the Government, initially or otherwise, to pay such expenses in excess of $10.00.

(c) When possession of funds or effects is transferred to a designate, the attention of the designate will again be directed to the fact that possession only has been transferred to him and that such transfer does not of itself affect title thereto, and that such designate will be accountable to the owner of said funds and effects under applicable laws.

(d) Upon receipt from the proper chief attorney of an appropriate certification that the guardianship was in full force and effect at the time of the veteran's death and that the guardian's bond is adequate, funds and effects of an incompetent veteran may be immediately delivered or sent to such guardian, inasmuch as the guardian had a right to possession, and he will be accountable therefore to the party entitled to receive the decedent's estate. If, however, it appears probable that decedent died without a valid will and left no person surviving entitled to inherit, the funds will not be paid to the former guardian but will be deposited in the General Post Fund. The effects will be sold, used or destroyed at the discretion of the manager or his designated representative.

§ 12.5 *Non-designate cases.* If there exists no designate at the time of death at a field station of a veteran admitted as competent, or the designate fails or refuses to claim the funds and effects as defined in § 12.0 (a) within 90 days following the mailing of notice to such designate, the manager will take appropriate action to dispose of the funds and effects to the person or persons legally entitled thereto, i. e. the executor or administrator of the decedent, or if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother or sister in the order named. Subject to the applicable provisions of §§ 12.3 and 12.4, such delivery may be made at any time before the sale contemplated by § 12.9 to the designate or other person entitled under the facts of the case. However, delivery shall be made only to the person entitled to priority unless each of those entitled to priority as to the claimant waives in writing his or her prior right to possession. The guardian of a minor or incompetent may waive his ward's prior right to possession.

§ 12.6 *Cases of living veterans.* (a) Except as provided in § 12.8, effects of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the field station) will be disposed of as follows:

(1) To the owner if competent, or if deceased to his administrator or executor or as directed in writing by such owner, or his executor or administrator.

(2) To the guardian of the owner if the latter be incompetent, or if deceased to his administrator or executor, or as directed in writing by such guardian, executor or administrator.

(3) To the incompetent owner if he has no guardian; delivery, however, to the incompetent owner may be withheld and may be made to the person who is caring for such incompetent if in the judgment of the manager or his designated representative such delivery is to the incompetent's best interest.

NOTE: The Government will not pay expense of transportation of effects of competent or incompetent veterans discharged, absent without leave, or who have eloped.

(b) Funds of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the field station) will be disposed of in accordance with finance procedures.

§ 12.7 *Cases not applicable to provisions of §§ 12.0 to 12.6.* The provisions of §§ 12.0 to 12.6 shall be inapplicable to property known to be that of any person dying in or discharged or absent without leave from a Veterans' Administration field station other than a veteran admitted as such to such field station.

§ 12.8 *Unclaimed effects of veterans.* (a) In the case of any property of a veteran who was in receipt of hospital or domiciliary care, heretofore or hereafter left at a Veterans' Administration field station, the owner of which is discharged or absent without leave or who has eloped and is not to be returned to a Veterans' Administration field station, or has died after departure therefrom, or in case the whereabouts or identity of any owner of any property thereat be unknown, such property, unless it shall be disposed of under the provisions of §§ 12.4 and 12.6 shall be sold, used, destroyed or otherwise disposed of as the manager or his designated representative shall determine the circumstances in the case may warrant. Any sale of such property shall be conditioned upon the 90-day notice provided in section 6 of the act of June 25, 1938 (38 U. S. C. 5–16e).

(b) If the circumstances are such that retention of any property as is mentioned in paragraph (a) of this section, or of any property of unknown ownership found on the premises would endanger the health or life of patients or others on the premises (by reason of contagion, infection, or otherwise) such property shall be forthwith destroyed on order of the manager or his designated representative and proper record of the action taken will be made.

(c) If there be no known claimant of any such property and if it may be used at the field station for the benefit of the members or patients for such purposes as the General Post Fund is intended to serve, and if the value is inconsequential, the manager or his designated representative may authorize the retention and use of such property at the field station.

(d) Any such property which is not destroyed or used as provided in paragraphs (b) and (c) of this section shall be sold in the manner provided in §§ 12.9 and 12.10, after notice as therein provided unless, prior to sale, claim be made for any such property by someone legally entitled thereto.

§ 12.9 *Rights of designate; sales instruction; transportation charges.* (a) Upon death of a veteran admitted as such to a field station the manager or his designated representative wil lcause notice (Parts I and V of Form 4–1171) to be sent to the designate: *Provided however,* That if the manager or his designated representative has information of the death of the primary designate notice shall be sent to the alternate designate

and all the provisions of the regulations in this part respecting the designate will be deemed to apply to the alternate. If the designate is a minor or a person known to be incompetent, delivery of the funds or effects will be made only to the designate's guardian or custodian upon qualification. The right of the designate to receive possession ceases when he refuses to accept delivery or if he fails to respond within 90 days after Form 4–1171 was mailed. When the right of a designate ceases, Form 4–1171 will be forwarded immediately to the alternate designate whose rights then become identical with those forfeited by the first designate, and the rights of the alternate designate shall terminate at the expiration of 90 days after the Form 4–1171 was mailed to him. Delivery will not be made to a designate until he submits a signed statement to the effect that he understands that the delivery of such funds and effects constitutes a delivery of possession only and that such delivery is not intended to affect in any manner the title thereto. Such notice shall fully identify the decedent and state the fact that he designated the addressee to receive possession of such property; that the right to receive possession thereof does not affect the ownership but that the designate will be responsible for the ultimate disposition thereof to those who, under applicable law, are entitled to the decedent's property; and will request prompt advice as to whether the designate will accept such property and that if he will, he furnish shipping instructions, upon receipt of which the property will be shipped at the expense of the Government. However, prior to dispatching such notice it will be definitely determined that the shipping expense will not exceed $10.00. If such expense will exceed $10.00 the excess cost will be ascertained and the notice will include a statement of the amount of such excess shipping cost with request that the amount thereof be remitted at the time shipping instructions are furnished. In estimating the shipping expense it will be assumed that shipment to the designate will be to the same address as that to which the notice is sent. Each notice, however, shall contain a statement that in no event will the Government pay shipping expense in excess of $10.00. The notice will include a copy of the inventory of the property which it is proposed to deliver to the designate.

(b) Upon receipt of appropriate shipping instructions the property will be shipped, transportation charges prepaid, by mail, express, or freight as may be appropriate under the circumstances and most economical to the Government. The expense of such shipment, chargeable to the Government, in no case to exceed $10.00, is payable from the appropriation "Salaries and Expenses."

(c) The living owner of any property left or found at a field station will be promptly notified thereof. In no case will transportation charges be paid by the Government on property shipped to a living veteran. In such cases shipment shall be made as requested by the owner of the property (or his guardian) upon receipt or necessary transportation charges which will be prepaid, unless the owner requests shipment with charges collect and the carrier will accept such shipment without liability for such charges, contingent or otherwise, upon the Government.

(d) If the designate refuses or, upon the lapse of ninety days, has failed to take possession or request shipment of decedent's property (paragraph (a) of this section), or if 90 days have elapsed after the finding of any property and the owner (known or unknown) has failed to request same, the manager or his designated representative will authorize destruction, use or sale.

(e) If sale of the property is authorized the manager will take necessary action to ascertain the names and addresses, of the owners; or, in the event of the owner's decease, of his executor or administrator, widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister.

(f) When in possession of the necessary information the manager will cause proper notice of sale (Form 4–1171) to be mailed. Such notice in all cases shall disclose the identity, if known, of the decedent whose property is to be sold and contain a copy of the inventory of such property. A copy of such notice (Form 4–1171), after Parts I, IV, and V thereof are completed, shall be mailed to the owner, if known, or if deceased to the decedent's executor or administrator, if known, and also to the widow (or widower), child, grandchild, mother, father, grandmother, grandfather, brother and sister, if known. If more than one relative of the degree named is known, copy will be mailed to each. If the owner is living, Parts IV and V only of Form 4–1171 will be completed.

(g) Copy of such notice (Form 4–1171, Parts IV and V) will also be posted by a responsible employee more than twenty-one years of age at:

(1) The field station where the death occurred or property shall have been found,

(2) The place where property is situated at the time such notice is posted, and

(3) The place where probate notices are posted in the county wherein the sale is to be had.

(h) In addition to showing the name of the owner, if known (alive or deceased), and the inventory of the property to be sold, such notice shall state the hour and day when and the precise place where the sale will occur and that the same will be at public auction for cash upon delivery without warranty, express or implied, and that such sale is pursuant to the act of June 25, 1938 (38 U. S. C., 16–16j); and shall also state that any person legally entitled to said property may claim the same at any time prior to sale thereof and in the event of such claim by a proper person the property will not be sold but will be delivered to the person lawfully entitled thereto. Said notice shall also contain a statement substantially to the effect that if sold the net proceeds of sale may be claimed by the person who is legally entitled at any time within five years after the date of notice; or in case of property the ownership of which was not originally known, within five years after its finding; otherwise such proceeds will be retained in the General Post Fund, subject to disbursement for the purposes of such fund.

(i) The person (or persons) posting said notice of sale (Form 4–1171) shall make appropriate affidavit on a copy thereof as to his action in that respect and the manager or his designated representative will also certify on the same copy as to the persons to whom copies of such notice were mailed and the mailing dates. The copy on which appear the affidavit and certificate as to service of the notice will be retained in the station file pertaining to the disposition of such property.

§ 12.10 *Proceeds of sale.* After proper notice as prescribed, sale of any such property which it is proper to sell, will be made by public auction by the manager (or any employee designated by him) at the time and place stated in the notice of sale. The property will be sold to the highest bidder (no employee except member employees of the Veterans' Administration shall purchase any of this property) and forthwith delivered and the amount of the bid collected and deposited to the credit of "General Post Fund, Veterans' Administration." Care will be taken to segregate the property of each owner and separate account will be maintained as to the proceeds of sale thereof. Property not disposed of by public auction will be included in the next sale or will be used or destroyed as the value thereof warrants at the discretion of the manager.

§ 12.12 *Miscellaneous provisions.* If it is shown that some person other than the veteran has title to property in a veteran's possession at the time of death, nothing contained in §§ 12.0 to 12.12 shall be construed as prohibiting delivery of such property to the owner. A life insurance policy may be delivered to the beneficiary therein named if the insured is deceased, notwithstanding the veteran has designated a person to whom possession of his property at the field station is to be transferred. In no case will funds or effects be delivered to a minor, or to an incompetent person other than as provided in § 12.9 (a) and (c), but where any such person is entitled to title or possession delivery may be made to his guardian.

§ 12.13 *Posting of notice of the provisions of Public No. 734, 75th Congress (38 U. S. C. 16–16j).* In order that all persons who bring property on premises of the Veterans' Administration may be advised of the existence of the act of June 25, 1938 (38 U. S. C. 16–16j), and that it affects such property, notice thereof (Form 4–1182), shall be permanently posted in at least one prominent place on the premises of each field station where persons are likely to see such notice.

DISPOSITION OF PERSONAL FUNDS AND EFFECTS LEFT UPON PREMISES OF THE VETERANS' ADMINISTRATION BY NON-VETERAN PATIENTS, EMPLOYEES AND OTHER PERSONS, KNOWN OR UNKNOWN

§ 12.15 *Inventory of property.* Immediately upon the death at a Veterans'

Administration field station of a person who was not admitted as a veteran, or immediately after it is ascertained that any such person has absented himself from such field station, a survey and inventory of the personal funds and effects of such deceased or absent person will be made in the manner prescribed in § 12.3 (a).

§ 12.16 *Action on inventory and funds.* (a) The manager will dispose of the personal funds and effects as promptly as possible. No expense will be incurred by the Government for shipment of the effects.

(b) In making disposition of funds and effects the manager will release the funds to the owner if living and will release the effects to him or as directed by him, provided that if he is incompetent and has a guardian the funds and effects will be released to such guardian. If the owner is deceased, and left a last will and testament probated under the laws of the place of his last legal domicile or under the laws of the State, territory, insular possession, or dependency, within which the field station may be, the personal property of such decedent situated upon such premises will be released to the executor. If such person left on said premises funds or effects not disposed of by a will probated in accordance with the provisions of this paragraph, such property shall be released to the administrator, if one has been appointed.

(c) In those cases where there is neither an administrator nor an executor the funds and effects will be released to the person entitled to inherit the personal property of the decedent under the intestacy laws of the State where the decedent was last domiciled.

(d) Where disposition of the funds and effects cannot be accomplished under the provisions of paragraphs (b) and (c) of this section, the funds, at the expiration of 90 days will be deposited to the General Post Fund and the effects will be disposed of in accordance with the provisions of §§ 12.8, 12.9, and 12.10.

§ 12.17 *Unclaimed effects to be sold.* (a) Personal effects of persons referred to in § 12.15 which remain unclaimed for 90 days after the death or departure of the owner shall be sold in the manner provided by § 12.8. The owner, his personal representative, or next of kin may reclaim any such property upon request therefor at any time prior to the sale.

(b) Any unclaimed funds and the proceeds of any effects sold as unclaimed will be deposited to the General Post Fund subject to be reclaimed within five years after notice of sale, by or on behalf of any person or persons who, if known, would have been entitled to the property prior to the sale.

§ 12.18 *Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.* (a) The manager will notify the commanding officer of the death or absence of such patient and will deliver to the commanding officer, without expense to the Veterans' Administration, the funds and effects of the deceased or absent officer, or enlisted man procuring a receipt therefor.

(b) If the funds and effects are not delivered to the commanding officer within seven days after the death or absence without leave of an officer, or enlisted man, the funds will be deposited to the Special Deposit Account. If not disposed of at the expiration of 90 days after the date of death or absence the funds will be transferred to the General Post Fund and the effects will be handled in accordance with regulations governing the disposition of unclaimed effects left by veterans. The funds and the proceeds derived from the sale of the personal effects will be paid to the person lawfully entitled thereto, providing claim is made within five years from the date of notice of sale, or in the case of legal disability within five years after termination of legal disability.

Under Public Law 382, 77th Congress, December 26, 1941 Amending the Act of June 25, 1910 (24 U. S. C., 136)

§ 12.19 *Provisions of Public Law 382 (38 U. S. C. 17–17j).* (a) Whenever any veteran (admitted as a veteran) shall die in any Veterans' Administration hospital, center or home or in any Federal, State or private hospital or other institution, while being furnished care or treatment therein by the Veterans' Administration without leaving a will and without leaving any spouse, heirs or next of kin entitled to his personal property, all such property, including money and choses in action, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, subject to claim as elsewhere provided.

(b) "Personal property" as used herein shall include cash, funds on deposit in Personal Funds of Patients, bank accounts, certificates of stock, bonds and notes the obligation of the United States or of others, money orders, checks, insurance policies the proceeds of which are payable to the veteran or his estate, postal savings certificates, and all other papers of every character; also clothing, jewelry and all other forms of personalty, or evidences of interest therein.

§ 12.20 *Posting of notice provisions of Public Law 382.* (a) Form 10–P–10, Application for Hospital Treatment or Domiciliary Care, includes notice to the applicant that effective as of March 26, 1942, the acceptance of care or treatment by any veteran shall constitute acceptance of the provisions of the act. Similar notice shall be given to each veteran receiving care as of March 26, 1942, by posting notice in a prominent place in each building wherein patients or members are housed. Such notices shall be posted immediately and kept posted.

(b) Since the provisions of the law are applicable to all veterans receiving care at the expense of the Veterans' Administration (whether in contract, Federal, State or private hospital) it shall be the responsibility of the Veterans' Administration officer authorizing admission of a veteran to other than a Veterans' Administration hospital, center or home, to cause the chief officer of such institution to post in a conspicuous place, in all buildings where veterans are housed, the provisions of § 12.19 (a), or if he declines to post such provisions, notify the patients individually and supply a statement from each acknowledging notice. Such provisions supersede in part the provisions of Form 10–P–10, executed prior to March 26, 1942.

§ 12.21 *Action upon death of veteran.* Upon the death of a veteran at a Veterans' Administration hospital, center or home while receiving care or treatment therein, and who it is believed leaves no will or heirs or next of kin entitled to his personal property, regardless of whether Form 4–1170, executed by the veteran, names a designate, an inventory of the funds and effects, Form 10–2687, will be promptly prepared and supplemented by all information or evidence available as to personal property owned by the veteran in addition to that left at the place of death; similar action will be taken when the death of such a veteran hospitalized by the Veterans' Administration occurs at a contract hospital, Army, Navy, Marine or other hospital. Such inventories and information together with any bank books, stocks, bonds, or other valuable paper as enumerated in § 12.19 (b), left in the effects of the veteran, will be delivered to the manager of the Veterans' Administration hospital, center or home having jurisdiction, for disposition in accordance with existing regulations.

§ 12.22 *Disposition of personal property.* (a) Any assets heretofore or hereafter accruing to the benefit of the General Post Fund other than money, stocks, bonds, bank deposits, and similar assets, but including jewelry and other personal effects, will be sold in accordance with existing regulations, except that articles of personal adornment which are obviously of sentimental value shall, if unclaimed, be retained for five years from the date of death of the veteran, unless for sanitary or other reasons their retention is deemed unsafe. Possession of effects other than those located on the premises of the Veterans' Administration will be obtained, except that if transportation, storage, etc., is involved, determination will be made as to whether expenditure therefor is warranted. Proceeds of the sale will be deposited to the credit of the General Post Fund.

(b) Stocks, bonds, postal savings certificates, money orders, bank deposit evidence (pass books, checks, time deposit certificates, etc.), and similar assets, actual or potential, will be promptly forwarded to the payees accounts service, central office, together with a copy of the inventory on which listed, in order that appropriate action may be taken to convert such assets into cash for deposit in the General Post Fund. Statement will be furnished that other papers listed on the inventory, if any, were examined and nothing of value found, if such is a fact. Funds on deposit in Personal Funds of Patients will be deposited to the General Post Fund. Any claims against the estate of the deceased veteran will be filed with, or if received elsewhere, will be forwarded to the payees accounts service.

§ 12.23 *Recognition of valid claims against the General Post Fund.* Effective December 26, 1941, the assets of the estate of a veteran theretofore or there-

after deposited to the General Post Fund are subject to the valid claims of creditors presented to the Veterans' Administration within one year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee or other person found to be legally entitled to the personal property of the veteran may claim same within five years from the date of the veteran's death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran's death the five-year period begins upon the termination of removal of legal disability. Such claims are for settlement by the payees accounts service. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund the case will be referred to the solicitor for appropriate action. Any necessary court costs or expenses will be paid from the appropriation Salaries and Expenses.

PART 14—LEGAL SERVICES, SOLICITOR'S OFFICE

SUBPART A—ADMINISTRATIVE

ORGANIZATION AND FUNCTIONS OF THE OFFICE OF THE CHIEF ATTORNEY, BRANCH OFFICES, AND THE OFFICE OF CHIEF ATTORNEY, REGIONAL OFFICES OR CENTERS

SUBPART B—FIELD EXAMINATIONS

SUBPART C—GUARDIANSHIP SERVICES

PROCEDURE TO BE FOLLOWED IN RECOGNIZING LEGAL CUSTODIAN, APPOINTMENT OF A GUARDIAN FOR A MINOR OR MENTALLY INCOMPETENT BENEFICIARY, AND THE MAKING OF INSTITUTIONAL AWARDS

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SUPERVISION OF CUSTODIANS, GUARDIANS, ETC., AND CHIEF OFFICERS OF INSTITUTIONS

REMOVAL OF LEGAL CUSTODIANS

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14.355 Grounds for removal.

REMOVAL AND DISCHARGE OF GUARDIANS

14.363 Grounds for removal.
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SUBPART A—ADMINISTRATIVE

AUTHORITY: §§ 14.0 to 14.26 issued under sec. 5, 43 Stat. 608; secs. 1, 2, 46 Stat. 991, 1016; sec. 7, 48 Stat. 9; sec. 1, 49 Stat. 607; 38 U. S. C. 2, 11, 11a, 426, 707, Sup. 450.

ORGANIZATION AND FUNCTIONS OF THE OFFICE OF THE CHIEF ATTORNEY, BRANCH OFFICES, AND THE OFFICE OF CHIEF ATTORNEY, REGIONAL OFFICES OR CENTERS

§ 14.0 *Activities.* The legal activities in addition to the solicitor's office, central office, will consist of the office of chief attorney in each branch office and the office of chief attorney in each regional office or center.

§ 14.1 *Functions of chief attorney, branch office.* The major functions of the office of the chief attorney, branch office, are as prescribed by Veterans' Administration Organization Order No. 27, March 4, 1946. In performing such functions the chief attorney, branch office, will be guided by the following:

(a) In reporting to the deputy administrator concerning the operations of the office of chief attorney in the field stations under the jurisdiction of the branch office, the chief attorney, branch office, will conform with instructions for chief attorneys, branch offices.

(b) (1) Correspondence from the chief attorney in the field stations addressed to the branch office in accord with Veterans' Administration legal regulations and other instructions will relate generally to:

(i) Policy and procedure matters.

(ii) Requests for advisory opinions on factual cases involving application of State or Federal laws.

(2) The chief attorney, branch office, will respond to such correspondence and furnish advice in accordance with such laws based on approved precedents, controlling interpretations and existing policies and procedures, but will refer to central office through the deputy administrator cases in which:

(i) Precedent questions on new policy or procedure or amplification of present policy and procedure are involved.

(ii) Doubtful matters arise relating to application of State or Federal laws or regulations and instructions, or affecting policy of Veterans' Administration.

(iii) There is a conflict of State laws or application of laws of States outside of the jurisdiction of the branch office.

(iv) Differences of views on technical professional matters between chief attorneys, field stations, and chief attorneys, branch offices not resolved at branch level.

(v) Appeals in litigated cases to appellate courts are involved (not district or other courts where trial is de novo).

(vi) State legislation is under consideration.

(vii) Correspondence with State Department, or Department of Justice (escheats, post fund, foreign cases) is concerned.

(viii) There may be a conflict of professional views with a chief attorney, regional office or center, not within jurisdiction of chief attorney, branch office, or where two or more chief attorneys, branch offices, are involved when the conflict cannot be resolved between the deputy administrators concerned.

(ix) Opinion of solicitor is desired or deemed advisable by chief attorney, branch office.

The chief attorney, branch office, will forward to the solicitor a copy of each legal opinion, not routine correspondence, addressed to the chief attorney. In forwarding questions involving application of paragraph (b) (2) (i) to (ix) of this section, the chief attorney, branch office, will give his views on the question involved.

(c) In furnishing legal advice to the deputy administrator and staff the chief attorney will be guided by and conform with existing precedents, opinions of the solicitor and Administrator's decisions. When no precedent exists the question will be submitted to the solicitor for an opinion or instruction.

(d) The office of the chief attorney, branch office, will include an adequate library and will maintain files as follows:

(1) Precedent or working files.
(2) Index of all files.
(3) Correspondence diary.

§ 14.21 *Duties of chief attorney, regional office or center.* The duties of the chief attorney, regional office or center, will be as follows:

(a) *Guardianship services.* (1) As specified in regulations in this part, determine and certify legality of appointment of guardians or other fiduciaries. In all cases within the jurisdictional limitations of §§ 14.200 to 14.217, to investigate and determine whether, under the law of the state, the person having custody of the claimant is legally vested with the care of the claimant or his estate within the meaning of section 21 of the World War Veterans' Act, 1924, as amended, or section 313 of the World War Adjusted Compensation Act, as

amended, and prepare the certification required by such paragraphs. Maintain a complete cross-reference index of all administration issues and all issued legal precedents affecting the operation of the administration. Responsible for all legal and guardianship activities and such other activities as are comprehended herein. Cooperate with all services to the end that minor and mentally incompetent claimants receive all benefits to which they may be entitled under the laws administered by the administration; and that the interests of minor and mentally incompetent beneficiaries, receiving benefits through fiduciaries properly appointed or constituted, will be safeguarded. Supervise the activities of such fiduciaries in the administration of their trust, see that bonds are furnished in appropriate amounts and with satisfactory sureties, secure certified copies of accounts rendered to the court, check all such accounts, and bring to the attention of the appointing court all cases wherein such fiduciary is found to be delinquent in any such matters or otherwise unsuitable. Secure accountings to the administration where accounts are waived by the court or not required annually under the state law, and at such other times as may be deemed necessary. Secure accounts from all custodians, and check same as to accuracy and with regard to appropriate expenditures of wards' funds.

(2) Survey the social and economic conditions of all minor or incompetent beneficiaries of the administration within his regional territory. Cooperate with the courts in the commitment of incompetent beneficiaries and appointment of guardians for minor or incompetent beneficiaries, or when authorized, to secure appointment of such guardians. Cooperate with chief attorneys of other offices in all cases wherein mutual aid and collaboration are essential. This refers to cases wherein the beneficiary is in one regional territory and the guardian, or appointing court, in another. Represent the administrator in any action taken under section 21 (2), World War Veterans' Act, 1924, as amended (38 U. S. C. 450), where satisfactory adjustment cannot be otherwise obtained; notify the appropriate service or division of central or branch office or division or unit of regional office to stop payment of any and all running awards therein, giving full reasons for such action. Cooperate with the chief medical officer to insure that no action will be taken that will be detrimental to a beneficiary, and that such beneficiary is not deprived of any rights other than by due process of law. If any beneficiary has been wrongfully committed, or has a guardian who was illegally appointed, or if a beneficiary duly adjudged incompetent is restored to sanity, to take such action as may be necessary and practical to have such beneficiary discharged and guardian removed, and may give advice and aid to the beneficiary in having himself adjudged sane, or sanity legally restored. Cooperate with the manager of hospital or chief medical officer with regard to commitment of patients and discharge of committed patients and to cooperate with such administration officers and state authorities in cases where such beneficiaries elope from hospitals. Keep a record of all action taken in each guardianship case handled, a record of accounts, and such other records as will enable him to supply the data necessary for the monthly, quarterly, and semiannual reports. His files and records will be kept in such order that they will be available at all times for checking by the field supervisor. Cooperate with all interested welfare agencies and secure their interest and cooperation in carrying out the administration's policy respecting minors and incompetents. Present to the state or local bar association, welfare organizations, or state legislature, suggestions relative to legislation or other matters.

(b) *Field examinations.* Is responsible for all field examinations (investigations) specified in § 14.50 and such others as may be assigned.

(c) *Legal services.* (1) Representative of the solicitor, and thereby legal advisor to the manager of the office to which assigned and other field stations of the Veterans' Administration located within the area allocated to that office.

(2) Cooperate with the United States attorneys in civil and criminal actions arising under the laws administered by the Veterans' Administration.

(3) Pass upon all contracts or leases referred to him by the manager. Pass upon requests for information on matters contained in administration files as provided in existing instructions, and be completely responsible for action in connection with subpenas for production of administration records in court. To make such examination as may be needed in connection with cases wherein violation of Federal penal statutes is suspected, and to collaborate with the United States attorneys in the prosecution of such cases.

(4) Advises and takes action as required or authorized in cases involving loans guaranteed or insured by the United States pursuant to Public Law 346, 78th Congress, as amended (38 U. S. C. 694j). Is attorney for the Administrator of Veterans' Affairs for all purposes of section 509, title III, of that act and, as such is authorized to represent the Administrator in any legal action or other legal matter under said title subject to statutes and executive orders concerning claims of the United States.

§ 14.24 *Organization of the office of regional chief attorney.* There will be a chief attorney's office in each regional office and center with regional office activities in the United States and its insular and territorial possessions, which shall be composed as follows: chief attorney; assistant attorney or attorneys; field examiner or examiners; fiduciary accounts analysts; stenographer-secretary; and such clerical and stenographic personnel as may be necessary.

§ 14.26 *Duties of personnel of chief attoney's office.* The personnel of the chief attorney's office will have such duties as are hereinafter prescribed, and such other duties as may be assigned them.

SUBPART B—FIELD EXAMINATIONS

AUTHORITY: §§ 14.50 to 14.54 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 991, 1016, sec. 7, 48 Stat. 9, sec. 1, 49 Stat. 607; 38 U. S. C. 2, 11, 11a, 426, 707, Sup. 450.

§ 14.50 *Types of field examinations.* Field examinations will be of the following types: Examinations in guardianship and custodianship cases; examination of offenses against the Federal laws; examination of accidents alleged to be due to negligence of Veterans' Administration employees and accidents causing damage to Veterans' Administration property (this refers only to torts wherein a liability arises against or in favor of the Government); examination into claims cases, including compensation, adjusted compensation, pensions, vocational rehabilitation and education; retirement pay; insurance cases, guaranty or insurance of loans and other benefits under the Servicemen's Readjustment Act of 1944, as amended; examinations directed by the manager or deputy administrator on general administrative matters; and examinations requested by a United States district attorney or other representative of the Department of Justice, in civil and criminal cases.

§ 14.52 *Preparation of requests for field examinations.* All adjudicating and other agencies are directed to observe the provisions of the Field Examination Manual and the following instructions concerning requests for field examinations. Field Examination Request, VA Form 2–3537a, will be prepared in each case in duplicate, one copy retained in file, the original being signed by the official making the request and forwarded to the regional chief attorney, whose office is to make the field examination. If an additional copy of the field examination report is desired by the requesting agency this will be indicated by supplying an additional copy of the request. If simultaneous field examinations are to be made in different offices, sufficient additional copies will be made so that a copy may be sent each office concerned. The statement of facts should be sufficiently complete to give the receiving office, and the field examiner to whom the field examination request is assigned, a clear understanding of the situation. The points to be developed must be specific and as complete as circumstances permit. If documents are in question, they should be attached to the VA Form 2–3537a. The complete file will be forwarded with the VA Form 2–3537a when, in the opinion of the requesting official, such action is necessary to satisfactorily accomplish the field examination. Any field examination request not prepared in the manner outlined above will be returned by the chief attorney to the official making the request for compliance with the foregoing instructions.

§ 14.54 *Authorization and functions of field examiners.* Field examiners are authorized to examine into the correctness of claims and to administer oaths and affirmations in connection with claims arising under the laws administered by the Veterans' Administration when required and in taking testimony or depositions. Field examiners will perform all

field examination work assigned to the office of the chief attorney, regional office, in accordance with regulations, and such other duties as are assigned by the chief attorney or manager.

SUBPART C—GUARDIANSHIP SERVICES

AUTHORITY: §§ 14.60 to 14.369 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 991, 1016, sec. 7, 48 Stat. 9, sec. 1, 49 Stat. 607; 38 U. S. C. 2, 11, 11a, 426, 707, Supp. 450.

§ 14.60 *Cooperation with associated agencies.* Every effort will be made to notify the appropriate officer of an interested agency of all cases of minors needing aid and attention which is beyond the scope of the duty of the Veterans' Administration. (See §§ 14.296 and 14.368.)

§ 14.61 *Use of penalty envelopes.* Requests have been made by some of the guardianship attorneys of the American Legion for penalty envelopes to be used in their correspondence with the regional office relative to the appointment and discharge of guardians and to the checking of guardianship accounts. The statutes governing the use of penalty envelopes, embodied in section 485, Postal Laws and Regulations, restrict the use of such envelopes to departments and officers of the Government of the United States for the purpose of transmitting in the mails, free of postage, matters "relating exclusively to the business of the Government of the United States," persons other than such officers being prohibited from using them except when properly furnished by an officer of the Government with a request for official information as provided in section 3 of the act of July 5, 1884 (23 Stat. 158), paragraph 5, section 485, Postal Laws and Regulations, which reads as follows:

> Any department or officer authorized to use the penalty envelopes may enclose them with return address to any person or persons from or through whom official information is desired, the same to be used only to cover such official information and endorsement relating thereto.

Chief attorneys, will therefore be governed accordingly in forwarding penalty envelopes to attorneys rendering gratuitous legal service to Veterans' Administration beneficiaries.

§ 14.62 *State legislation.* The question of State legislation pertaining to Veterans' Administration beneficiaries is a complex matter. Chief attorneys will cooperate with the affiliated organizations and with local and State bar associations to the end that deficiencies of the State laws relative to guardianship and other matters may be removed. In order to insure carefully planned and coordinated legislation relative to such matters, all proposed legislation coming to the attention of the chief attorney will be submitted to the solicitor through the chief attorney, branch office, for review. Deficiencies in State laws will be brought to the attention of solicitor, through the chief attorney, branch office, with a request for advice or suggestions as to needed remedial legislation, and no action to commit the Veterans' Administration regarding any proposed legislation will be taken without the approval of the solicitor. Chief attorneys will express their views on the proposed State legislation in transmitting same to the solicitor. All such legislation enacted should be reported to the solicitor through the chief attorney, branch office, in order that information regarding same may be supplied chief attorneys, regional offices, and chief attorneys, branch offices, in other States.

PROCEDURE TO BE FOLLOWED IN RECOGNIZING LEGAL CUSTODIAN, APPOINTMENT OF A GUARDIAN FOR A MINOR OR MENTALLY INCOMPETENT BENEFICIARY, AND THE MAKING OF INSTITUTIONAL AWARDS

§ 14.200 *Notification to chief attorney.* In order that the chief attorney may supervise, in cooperation with the other services, all Veterans' Administration activities in his region having to do with the welfare of minors or mental incompetents, when any benefit is payable by the Veterans' Administration to a person mentally incompetent or to a minor other than a veteran who has been discharged from the military forces of the United States or a minor widow, the director of the veterans claims service, director of the dependents and beneficiaries claims service, director of the disability insurance claims service, central office, the director of claims service and director of insurance service, branch offices, the adjudication officer, or chief, vocational rehabilitation and education division, field stations, will notify the chief attorney of the region wherein the minor or incompetent resides of the necessity for the appointment of a fiduciary or the determination of a legal custodian, as the case may be, and request that such appointment be made as speedily as possible.

§ 14.201 *Form of notification.* The director of the veterans claims service, director of the dependents and beneficiaries claims service, director of disability insurance claims service, central office, or director of claims service and director of insurance service, branch offices, the adjudication officer, or chief, vocational rehabilitation and education division, field stations, will notify the chief attorney by letter or memorandum, advising the name and date of birth of the beneficiary, name and address of the parent or nearest next of kin of the beneficiary, if available from the records, and the amount of the initial payment and monthly payments to be made. If the beneficiary resides in another regional area, it will be the duty of the chief attorney receiving the letter or memorandum above provided to communicate the information contained therein to the chief attorney of the regional office or hospital concerned.

(a) Section 21 (4) of the World War Veterans' Act, 1924, as amended, repeals the act of August 8, 1882 (22 Stat. 373; U. S. C. title 38, section 44), and provides that in case of any incompetent veteran having no guardian, payment of compensation, pension or retirement pay may be made, in the discretion of the Administrator, to the wife of such veteran for the use of the veteran and his dependents.

(b) In cases coming within section 21 (4) of the World War Veterans' Act, 1924, as amended, the director, veterans claims service, central office, or adjudication officer, field station, will notify the chief attorney of the office having jurisdiction over the territory in which the veteran resides furnishing information as to the name and address of the veteran and his wife, the amount of the initial payment and monthly payments to be made. The chief attorney will investigate each case to determine whether the wife is properly qualified to administer the funds payable, whether she will agree to use the funds for the benefit of the veteran and his dependents, and whether all conditions justify payment of the compensation, pension or retirement pay to the veteran's wife; or whether, in the best interests of the veteran and his dependents a guardian should be appointed to receive and administer the funds payable. If the chief attorney determines that payments shall be made to the wife, a complete report will be forwarded to the director of the veterans claims service or adjudication officer, field station, accompanied by the evidence disclosing the facts, with a recommendation that payments be made to the wife. If the chief attorney determines that the facts justify the appointment of a guardian, he will take action promptly to effect the appointment and will forward the evidence thereof, together with his certification as to the legality of the appointment and adequacy of bond, to the director of the veterans claims service or adjudication officer, field station. For the purpose of determining whether the funds paid to the wife are being applied as intended and whether the payments should continue to the wife, or whether in the interests of the veteran and his dependents action should be taken to have a guardian appointed, or whether the veteran has recovered and should be rerated as to competency, a social survey will be accomplished each year. The case will be diaried for this purpose on the Account Due Card, VA Form 2–3526. A record of these cases will be maintained on the locator index, VA Form 2–3525, filed alphabetically. A correspondence file on each case will be maintained.

§ 14.202 *Diary and follow-up by originating service and notice by regional chief attorney.* The case file will be diaried by the director of the veterans claims service, director of the dependents and beneficiaries claims service, director of disability insurance claims service, central office, or director of claims service and director of insurance service, branch office, adjudication officer, or chief, vocational rehabilitation and education division, field station, to come up for attention sufficiently far in the future to enable the chief attorney to secure a certified copy of the letters of appointment of the guardian or arrange for the determination of a legal custodian. If action is not then completed, a proper follow-up will be maintained on the chief attorney. It will be the duty of the chief attorney to secure and furnish the officer requesting the appointment of the fiduciary a certified copy of the letters of appointment of the guardian with VA Form 2–4704, Certificate of Legality of Appointment and Adequacy of Bond, or

VA Form 2–555, Certificate of Legal Custody. The chief attorney will notify the officer requesting the appointment at the earliest moment possible, as to whether or not there will be a guardian appointed, or a determination as to a legal custodian in the case. The chief attorney will also notify the above-mentioned officers if there is to be a delay in the appointment of a fiduciary, the reason for such delay, and the probable date of appointment.

§ 14.203 *Chief attorney to use discretion in determining type of fiduciary.* The chief attorney will use discretion in determining whether a guardian or a legal custodian will be recognized. The amount of money involved will not be the only factor considered in the determination of a legal custodian. The appointment of a guardian will be required when such action is deemed necessary to protect the interests of both the minor or incompetent and the Veterans' Administration. The practicability of the appointment of a guardian, as well as the depletion of the estate by the cost of administration of the estate by such fiduciary, will be carefully considered before requiring the appointment of a guardian. The chief attorney will also use discretion, where the appointment of a guardian is deemed necessary both from the standpoint of the ward as well as the Veterans' Administration, in advising with the court in the selection of the person to serve in this capacity.

§ 14.205 *Amount of benefits payable by Veterans' Administration to legal custodian or custodian-in-fact, payments to bonded officer of Indian reservations.* When a claimant under legal disability is found entitled to any benefit payable by the Veterans' Administration, the accrued amount of which at the time of the execution of VA Form 2–555, Certificate of Legal Custody, is $700 or less, or the monthly rate of which is $65 or less, or if the finding is in favor of two or more claimants under legal disability and the accrued amount is $1,000 or less, or the combined monthly rates for two claimants amount to $90 or less, for three claimants $115 or less, plus monthly payments of $20 for each additional claimant, and no legal guardian or committee has been appointed, the awards shall be made upon proper finding to the person legally vested with the responsibility or care of such claimant or claimants: *Provided,* That the best interests of the claimant or claimants will be served thereby and the legal custodian is properly qualified.

(a) In any case wherein payments to a fiduciary have been withheld or suspended, the chief attorney will determine whether payment of all or any part of funds so withheld is necessary for the support and welfare of the beneficiary or of his dependents. If such needs cannot be met by an institutional and/or apportioned award under governing instructions applicable thereto and the minor or incompetent beneficiary is in the actual custody of some reliable person, the chief attorney will secure the evidence of such actual custody, together with a signed agreement—and if necessary a bond—of said person to receive and use for the sole benefit of such beneficiary moneys due on his account, and will certify such custody in accordance with § 14.206: *Provided,* That instead of the information called for by paragraph (a) (4) of § 14.206, the certificate will contain a statement showing why payments to the fiduciary have been withheld or suspended; and in addition will set out the period of time payments are to be made to the custodians-in-fact and the amount thereof.

(b) If benefits are due an incompetent adult or a minor Indian who is a recognized ward of the Government and for whom no guardian has been appointed, the chief attorney will secure from the proper superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under the provisions of Public, No. 373, 72d Congress (25 U. S. C. 14), a certification showing that (1) the said beneficiary is a ward of the Government, (2) that no guardian or other fiduciary has been appointed, (3) that the officer has been designated by the Secretary of the Interior in accordance with said act, (4) that he is properly bonded, and (5) that he will receive, handle, and account for such benefits in accordance with existing law and the regulations of the Department of the Interior. VA Form 2–555 will not be prepared in such cases; instead, the chief attorney, if he approves the certification, will forward it to the proper adjudication agency for payment under said act. The limitations of this section will not apply to these cases, nor will accounts be required of such officers by the chief attorney.

§ 14.206 *Evidence of custodianship.* (a) The chief attorney will secure a certificate on VA Form 2–4703 executed by the proposed legal custodian, supported by the certificates of two disinterested persons, setting forth the following:

(1) Relationship of proposed legal custodian to the minor or incompetent claimant.

(2) The person legally vested with the responsibility or care of the claimant's estate and the relationship between such person and the claimant.

(3) The State which is the legal residence of custodian and claimant.

(4) That no guardian, curator, or conservator has been appointed; or that no guardian, curator or conservator has been constituted under the laws of such State of the claimant's residence, as the case may be.

(5) That the person named as custodian is charged with the responsibility and care of the claimant and is exercising same. (The certificate of the two witnesses must state that the proposed custodian is a fit person to have the custody and care of the claimant and is qualified in every respect to receive, disburse, and account for amounts payable on account of the claimant.)

(6) That the claimant is living and in such custody at the time.

(7) The period during which such custody has extended (showing dates).

(8) If the claimant is not in the actual custody of the person claiming to be legal custodian, the reason for such separation and the arrangement under which the claimant resides in some other place should be given, together with the name and address of the person having charge of such claimant.

(b) In addition thereto, the chief attorney will, upon request of the adjudication agency, secure, through the interested parties, certified copies of the following papers, when necessary, under the seal of the custodian of the original records:

(1) Birth certificate or other proof of birth of claimant (if the claimant is a minor).

(2) Decree of divorce, if any, of legal custodian and veteran.

(3) Decree of adoption, if any, of claimant.

(4) Inquisition papers of unsoundness of mind of claimant, or restoration to sanity.

§ 14.207 *Recognition of legal custodian.* (a) Section 21, World War Veterans' Act, 1924, as amended by Public No. 262, 74th Congress, third proviso, is as follows:

> That where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State of residence of the claimant, the Administrator shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(b) This section of the World War Veterans' Act, 1924, as amended, provides that the Administrator shall determine the person legally vested with the care of the claimant or his estate. This determination is delegated to the chief attorney inasmuch as the question is legal and dependent upon State statutes or court decrees. A study of the State statutes is necessary to determine the person who is legally vested with the care of the claimant. The natural parent is usually recognized as being legally responsible for the care of a minor child unless such relationship has been disturbed by judicial decree. Reference should be made to the State statutes to determine a stepparent's legal responsibility, both during the life of the natural parent and after death of such natural parent. If the natural parent (female) has remarried, some jurisdictions have placed a responsibility upon the stepfather to care for and support the minor children of his spouse, and if such responsibility exists, protective measures must be taken to assure that the Government funds appropriated for the benefit of the minor are actually used for this minor, in addition to the benefits due from the stepparent. When the status of loco parentis exists the person standing in that relationship to the claimant, or the person vested with custody by judicial decree, may be recognized as legal custodian. Extreme care will be taken in considering a custodial award for an incompetent.

(c) In view of the responsibility that is placed upon the chief attorneys, the greatest possible degree of care must be exercised in determining such matters in connection with possible custodianship cases.

§ 14.210 *Bond of custodian.* The chief attorney, regional office or center, the solicitor, or the chief attorney, branch

office, as the case may be, may require the person recognized as legal custodian of a claimant or as custodian in fact under the provisions of section 21 (3), World War Veterans' Act, 1924, as amended, and § 14.205 (a), to furnish bond before payments are made to such person on behalf of the claimant. Said bond shall run to the Administrator of Veterans' Affairs for the use and benefit of ----------
(Name of ward)

§ 14.211 *Certificate of legal or actual custody.* VA Form 2–555, Certificate of Legal Custody, or VA Form 2–555c, Certificate of Actual Custody, will be prepared and signed by the chief attorney who has secured the data upon which said certificate is based and forwarded to the adjudication agency which requested the appointment. No certificate will be issued where it is shown that the person to whom it is proposed to make payments is not a fit person to have custody of the claimant.

§ 14.216 *Branch chief attorney authorized to waive limitation as to amount of award.* The chief attorney, branch office, may waive limitation as to the amount of the award specified herein whenever satisfied that the best interests of the claimant will be served thereby, and determine the person entitled to receive payment for the claimants, and in such cases the payments will be made to such person. Such exceptional cases will be brought specially to the attention of the chief attorney, branch office. In these cases the chief attorney will prepare the certificate of custody in duplicate, for the signature of the chief attorney, branch office, retaining one copy and forwarding the original and accompanying affidavits, etc., to the office of the chief attorney, branch office. After action thereon has been taken by the chief attorney, branch office, the evidence of custodianship will be returned to the proper field station or forwarded to the proper service, central or branch office. Such cases being handled by an insular office not within the jurisdiction of a branch office, or in which the beneficiary whose claim is adjudicated in central office resides in a foreign country will be referred to the solicitor for consideration of waiver of the limitation as to the amount of the award.

§ 4.217 *Certificate of custody authority for payment.* The certificates of custody issued under the provisions of § 14.211 will be authority for payment to the person designated therein as custodian only while there is no legal guardian, curator, or conservator, and while the other requirements of custody and responsibility exist; except that in cases falling under section 21 (3), World War Veterans' Act, 1924, as amended, the certificate authorized by the provisions of § 14.205 (a) will be authority for payment to the custodian in fact for the period stated therein, unless it is determined that payments may be resumed to the fiduciary prior to the expiration of such period.

§ 14.219 *Chief attorney to determine need for appointment of fiduciary.* In any case the chief attorney will determine in accordance with § 14.203 whether a fiduciary should be appointed; and if so, will make arrangements to have the proper person or institution take the necessary steps to secure such appointment. The Veterans' Administration may institute legal action for original appointments of a guardian in such cases. If no guardian is to be appointed the requesting officer will be duly advised.

§ 14.220 *Chief attorney to sign certificates required by Uniform Veterans' Guardianship Act, or similar State Legislation, as representative of the Administrator.* In accordance with the authority granted to the Administrator under section 7, Public No. 2, 73d Congress (38 U. S. C. 707), chief attorneys are hereby authorized to sign, as representative of the Administrator, certificates required by the Uniform Veterans' Guardianship Act, or similar State legislation adopted in lieu thereof.

§ 14.221 *Suitable fiduciary.* After the investigation, should the chief attorney decide that a guardian should be appointed, he will notify the interested parties and will suggest that a bank or trust company, or if none available, a fit individual, be appointed. If the person recommended by the interested parties is not suitable every effort will be made to secure the endorsement of a suitable institution or person. The chief attorney may make recommendation to the court as to the qualifications of the proposed guardian. Banks and trust companies are favored as guardians of the estate, and near relatives as guardians of the person or of person and estate, if ward be a minor.

§ 14.222 *Policy in recognizing banks and trust companies.* The chief attorney, before recognizing State banks and trust companies, will be assured that the financial responsibility of such bank or trust company is without question. The chief attorney will submit a complete report to the chief attorney, branch office, in all cases of closing of banks acting as guardians, or of banks in which guardianship funds are on deposit; and will also report the action that has been, or will be, taken to safeguard the interests of the ward or wards.

COMMITMENT OF MENTALLY INCOMPETENT BENEFICIARIES, APPOINTMENT OF GUARDIANS FOR INCOMPETENT AND MINOR BENEFICIARIES, AND PAYMENT OF EXPENSES IN CONNECTION WITH SUCH APPOINTMENT

§ 14.223 *Chief attorney to render assistance to courts.* The chief attorney will render all assistance possible to the courts in commitment cases. To this end there is authority for production of Veterans' Administration records, in court in such proceedings.

§ 14.224 *Costs for commitment of insane veterans.* Upon certification by the manager or chief medical officer of a regional office or Veterans' Administration hospital, that commitment of an insane male or female veteran to a Veterans' Administration hospital or to a contract hospital is necessary in order to afford, or continue, authorized care, the chief attorney is hereby delegated authority to authorize in advance court costs and other necessary expenses to accomplish such commitment. Further authority is hereby delegated to the chief attorney to authorize in advance the payment of court costs and other necessary expenses incident to the restoration to sanity of veterans who were committed at the instance of the Veterans' Administration or the costs of whose commitment were paid by the Veterans' Administration. This authority is to be applied in those States, the laws of which require court proceedings for restoration to sanity and in cases in which the veteran is discharged from the hospital upon the premise that further medical care or treatment is not required. Costs or attorney fees will not be reimbursed without authorization of the chief attorney, branch office.

(a) In those cases where the beneficiary is admitted upon proper authorization from one State to a hospital located in another State, as for example when a patient is sent from Connecticut to the Veterans' Administration Hospital, Northampton, Mass., or from Missouri to the Veterans' Administration Hospital, Danville, Ill., and commitment is necessary in the State wherein the hospital is located, the chief attorney of the office in whose area the hospital is located will authorize the cost of commitment, and the finance officer in that office will approve and forward for payment, vouchers covering the costs as authorized. In some States such veterans, if insane or incompetent, may be retained for a temporary period only and thereafter must be committed if they are to remain in the hospital. It is intended and desired that the chief attorney within whose area the hospital is located will cooperate fully with the manager of that hospital in all matters pertaining to the commitment of such veterans, and that the chief attorney will authorize the costs thereof, if same are payable by the Veterans' Administration. In order, however, that he may have sufficient information on which to act, it is necessary that the sending office either forward the claims folder, unless a guardian has been appointed, so as to be received by the office within whose area the hospital is located within 10 days after the veteran is hospitalized, or that the chief attorney of the sending office notify the chief attorney of the office within whose territory the hospital is located of the fact that the veteran has been transferred for hospitalization and that he is deemed to be incompetent or insane. Upon receipt of claims folder or such information the chief attorney will cooperate with the manager of the hospital in regard to any commitment that may be necessary. In such cases the manager of the hospital will take up the question of commitment with the local chief attorney. If veteran is committed pursuant to the provisions of the Uniform Veterans' Guardianship Act, or similar statute, by a court of the State in which the veteran is located, to a Veterans' Administration hospital in another State, recommitment in the latter State will not be necessary nor will costs thereof be paid by the Veterans' Administration.

(b) In some States the law provides that court costs in connection with ad-

judication of insanity for commitment should be borne by the State, county, or other municipality in which the insane person resides or is located. Usually it is also provided that the amount thereof may be charged to or recovered from the estate of the incompetent or relatives. If there is any provision of law, or administrative regulation issued pursuant to law, whereby such costs are chargeable to the veteran or may be taxed against his estate, his guardian or legal representative, the Veterans' Administration will pay the amount thereof regardless of his ability to pay such costs. When such costs are legally the liability of the State or municipality and may not be assessed against the veteran the chief attorney will not authorize payment of such costs by the Veterans' Administration. Any question arising in such States will be reported to the chief attorney, branch office.

§ 14.225 *When Veterans' Administration physicians may testify in lunacy proceedings; employment of private physicians.* When costs are authorized pursuant to § 14.224 or 14.227 the services of Administration physicians will be available for the purpose of testifying in proceedings incident to the adjudication of insanity of veterans who are beneficiaries of the Administration, and when required for Administration purposes, either for commitment or appointment of a guardian, or both, subject to the following limitations:

(a) When such testimony is precluded by State law, as where the statute provides that an insane person may not be committed to an institution on the testimony of officials connected with such institution.

(b) If some relative of the veteran, other than the one who requested the commitment, objects to the proceedings, or files a contest, Veterans' Administration physicians will not testify voluntarily.

(c) If any party in interest causes a subpoena to be issued requiring a Veterans' Administration physician to testify in adjudication proceedings, he should comply therewith. Veterans' Administration physicians may testify on behalf of a veteran in a proceeding brought for the purpose of determining his competency in order that his civil rights may be restored. Veterans' Administration physicians may, if permitted by State law, sign interrogatories or certificates of insanity; and upon the discharge as sane of any veteran committed under the Uniform Veterans' Guardianship Act, or similar State legislation, the manager of a Veterans' Administration hospital may supply the committing court with a certificate of sanity as contemplated by the statute.

(d) If travel is necessary in the performance of the duty contemplated by § 14.225, the manager will authorize same for the Veterans' Administration physician stationed at the regional office or at the hospital, and will encumber his budget accordingly. Physicians will not be ordered from their stations if, in the opinion of the head of the station, their services cannot be spared for the time necessary to permit them to testify. Travel orders for the purposes of § 14.225 will not require travel to or from any point more than 100 miles beyond the limits of the regional area and no travel order will be issued unless the Veterans' Administration desires the testimony of the Veterans' Administration physician for the purposes stated.

(e) When Veterans' Administration physicians are not available for the purposes of this section, or where the expense involved in utilizing a Veterans' Administration physician would be greater than the cost of employing a psychiatrist for such purposes, the manager, upon the recommendation of the chief attorney and the concurrence of the chief medical officer, may employ such psychiatrist subject to the following limitations:

(1) Whenever it becomes necessary under the provisions of this paragraph to utilize the services of a physician not in the employ of the Veterans' Administration, the expenses incident thereto will be paid under the authority contained in §§ 14.224 and 14.227 to 14.229 in accordance with the following:

(i) For preliminary examination, the fees prescribed by the Schedule of Fees, Veterans' Administration Medical Procedures will be authorized, and where it is not possible to have the veteran examined at the physician's office, the expenses provided by Veterans' Administration Medical Procedures will be authorized.

(ii) The fee to be allowed such physicians for testifying in court will be limited to the fee prescribed by the State law, local practice, or procedure. In those jurisdictions wherein no fee is prescribed by the State law, local practice, or procedure, but the fee is left to the discretion of the court, the fee allowed by the court will be paid, and every effort will be made to keep such fee to the minimum. If the court does not fix the amount of the fee, the physician will be allowed a fee for attendance at court in the same amount as is allowed for an attorney by the schedule of fees, § 14.252.

§ 14.226 *Authorizing transportation necessary for appointment of a guardian for, or for commitment of, a veteran beneficiary.* In any case wherein the insane veteran for whom a guardian should be appointed or who should be committed, is in a hospital and under the law of the State wherein the hospital is located a guardian cannot be appointed locally, or, if commitment be necessary, such commitment may not be had locally, it may become necessary to have the veteran returned temporarily to his home in order that proper legal process may be served preliminary to the necessary legal proceedings. In such case if the hospital is not more than 100 miles beyond the limits of the regional area the chief attorney may authorize the costs in accordance with existing regulations, including such necessary travel of the veteran and an attendant or attendants, if necessary. If the hospital is more than 100 miles beyond the regional area limits the chief attorney will secure prior authority from the chief attorney, branch office. In any event, the chief medical officer or the clinical director of the hospital where the veteran is located will determine whether the veteran is able to travel for such purposes. It is re-emphasized that such travel will not be authorized unless there be no other legal method of appointing a guardian, or committing the veteran, as the case may be.

§ 14.227 *Costs for appointment of guardians; when authorized at Veterans' Administration expense.* Costs for appointment of guardians pursuant to section 21 of the World War Veterans' Act, 1924, as amended, which applies to all benefits payable by the Veterans' Administration, will be authorized only in cases wherein:

(a) Benefits payable are small and such costs would unduly deplete the estate. In applying the above, chief attorneys may authorize costs and perform legal services incident to the appointment of a guardian in any case wherein the total amount of benefits payable at date of award on which request for appointment of guardian is based does not exceed the amount prescribed by Public Law 662, 79th Congress (38 U. S. C. 739), for the discontinuance of payments; in any exceptional case not falling within this limit, but wherein the chief attorney is of the opinion costs should be paid, a full report may be made to the chief attorney, branch office, with a request that costs be authorized. Costs will not be authorized or paid in any case if the proposed guardian is not satisfactory.

(b) Costs must be advanced, and there is no immediate estate from which same may be paid. If case does not fall within paragraph (a) of this section, recovery of costs so advanced will be made from benefits payable.

(c) Appointment caused by Veterans' Administration, and it develops that no benefits are payable and no estate from which costs may be paid.

§ 14.228 *Chief attorneys delegated power to authorize costs incident to appointment of guardians.* Subject to the provisions of § 14.227, chief attorneys are hereby delegated authority to authorize incurrence of such costs, and payment thereof; and may render necessary legal services in such cases. If in any case not comprehended by § 14.227, the chief attorney believes that circumstances warrant payment of costs by the Veterans' Administration, he will report the facts with request for special authority from the chief attorney, branch office, to incur costs, and will state the amount of such costs and other expenses involved. The necessary legal expenses in connection with the appointment of a guardian do not include the premium on the fiduciary's bond. Such premium is an administrative expense which must be borne by the guardian or by the estate, depending upon the provisions of the State law.

§ 14.229 *Court costs; what may be included as.* In all cases where the Veterans' Administration pays the expenses incident to the appointments of guardians under the provisions of § 14.227 the costs of procuring certified copies of letters of guardianship and guardians' bonds will be paid by the Veterans' Administration as a part of the necessary

court costs, while in those cases where the costs of appointments are payable by the estate of minor or incompetent beneficiaries the costs of securing certified copies of such documents will not be paid by the Veterans' Administration unless desired in connection with an investigation authorized by section 21 (2) of the World War Veterans' Act, 1924, as amended. In all cases such authorization will be subject to the following further limitations:

(a) Court costs will include only those chargeable under the statutes and must be certified by the clerk of the court.

(b) Attorneys' fees, within the limitations of the schedule of fees, § 14.252, may be paid if authorized under the provisions of § 14.237.

(c) Such expenses for appointment of a substitutionary guardian will be paid only when the former guardian was removed, or was caused to resign, at the instance of the administration, or, in the event of the death of a guardian, when the appointment of a new guardian is necessary to receive the benefits payable by the administration.

(d) Vouchers for payment of above expenses will refer to this section, and if special authority has been secured in any case, to the approval letter of the chief attorney, branch office, as authority therefor.

(e) Expenses in connection with the supervision of the administration of such estates by such fiduciaries, as used in section 21 (2), World War Veterans' Act, 1924, as amended, is interpreted to authorize only payment of administration expenses incurred in such connection, and not expenses of fiduciaries.

§ 14.230 *Chief attorney not to file petition for inquisition in lunacy unless requested by veteran or relative, civil official, etc.* The chief attorney will not file or cause to be filed a petition for an inquisition in lunacy for commitment or for the appointment of a guardian unless he has a written signed statement from the incompetent veteran's nearest relative or from the veteran himself. In the event there is no near relative and if the veteran is not mentally capable of authorizing such action, the chief attorney may file the petition if signed by a civil official or representative of a cooperating agency. No employee of the Veterans' Administration will sign such a petition unless authorized by the solicitor. The chief attorney will render the legal services in commitment cases when costs are authorized to be paid by the Veterans' Administration as provided in § 14.224. In guardianship cases the chief attorney will notify the veteran's nearest relative. The person selected as the proposed guardian, a civil official or a representative of a cooperating agency of the action that should be taken, and that the chief attorney will, if so requested, file the petition without cost if veteran is not entitled to sufficient benefits to justify employment of an attorney. Thereafter he will take no definite action relative to the filing of a petition unless and until such written request therefor is received.

§ 14.231 *Determination as to correctness of costs.* It will be the duty of the chief attorney in all cases under his jurisdiction to take all administrative action devolving on the Veterans' Administration incident to the commitment of mentally incompetent veterans, or other legal action under section 21 (2), as amended, and as authorized herein. The chief attorney will obtain such information as is necessary to determine that the costs charged are correct, just, and necessary, and in accordance with the provisions of §§ 14.223 to 14.229. Payments will be made in accordance with finance procedure.

§ 14.232 *Authorization by chief attorney of commitment and appointment costs.* The chief attorney will be responsible for the issuance of all authorizations for the commitment of mentally incompetent veterans when required for purposes of authorized care and for court expenses incident to appointment of a guardian when such action is at the instance of the Veterans' Administration as outlined in §§ 14.224, 14.227 or 14.229.

§ 14.233 *Chief attorney to check court cost vouchers.* The chief attorney will see that the voucher is executed properly showing the court costs or expenses incident to such action and the amount and for what purpose the charge is made, that the charges are correct, just, and necessary, and in accordance with § 14.224, § 14.227 or § 14.229. The "necessary costs" must, in the absence of a judicial finding as to their amount, be correct, just, and proper.

§ 14.234 *Chief attorney to notify proper person of need for appointment of guardian.* If commitment is not necessary for authorized care but the appointment of a guardian is required, the chief attorney will notify the proper person as to what action is necessary. No one outside the Veterans' Administration will be notified of the fact that an award is pending the qualification of a fiduciary except as provided in § 14.221. The purpose of this procedure is to enable the Veterans' Administration to avoid appointment of unsuitable persons as guardians, and enable the chief attorney to take necessary action to authorize costs incident to such appointment if in order.

§ 14.235 *When chief attorney may prepare appointment papers or furnish advice.* The chief attorney may prepare all necessary legal papers in those cases wherein expenses are hereinbefore authorized (§§ 14.224, 14.227, and 14.229). In other cases, he may give such help and advice as may be necessary and advisable, and may assist the guardian in securing necessary legal services at nominal cost whenever possible.

§ 14.236 *Chief Attorney to Authorize Costs for Removal of Guardians.* Where it is necessary to institute action under section 21 (2), World War Veteran's Act, 1924, as amended, to remove a guardian, and have another appointed, the legal expenses in connection therewith, including court costs, may be paid. Chief attorneys will institute action to remove a guardian only in case of actual embezzlement or misappropriation of funds, or where an absolutely necessary adjustment cannot otherwise be made. Where practicable, payments will be made in such cases by means of institutional and apportioned awards, or otherwise they may be made to a custodian-in-fact. As provided in § 14.328, the legal expenses will be authorized by the chief attorney, but strictly in accordance with §§ 14.227 to 14.235. If required by State law or rule of court such costs and expenses may be advanced. When expenses are authorized by the chief attorney for the removal of a guardian it does not follow necessarily that such expenses shall be borne by the Veterans' Administration. Of course, it is intended that the chief attorney may pay such filing fee and other costs as may be necessary, but under the practice and procedure in most jurisdictions the costs of such action may be taxed against the unsuccessful party, that is, in these cases, the guardian who is found delinquent and therefore is removed. They should not, of course, be taxed against the estate of the ward. If such costs having been paid by the Veterans' Administration are recovered from the guardian they should in every instance be covered into the Treasury of the United States as miscellaneous receipts. The chief attorney will be responsible for seeing that such costs are recovered, if possible.

§ 14.237 *Branch Chief Attorney Empowered to Authorize Employment of Local Attorney.* In any case wherein legal action at the expense of the Veterans' Administration is authorized, if the legal services cannot be performed by the chief attorney or his assistant, by reason of distance, time, and cost of travel involved, etc., the chief attorney will secure authority from the chief attorney, branch office, to employ a local attorney to handle the case. If the guardian to be removed is in one jurisdiction, and the appointment of the new guardian is desirable and legal in another jurisdiction, the chief attorneys within the respective jurisdictions will be jointly responsible for the legal action involved, and will cooperate so as to insure a satisfactory adjustment. After appointment, the chief attorney within the jurisdiction of the appointing court will maintain the principal guardianship file. The other chief attorney, however, will attend to the final accounting, etc., of the removed guardian. The policy of the Veterans' Administration is to have the guardians appointed, in the first instance, where the beneficiary resides permanently, and thereafter not to change guardians except for the most cogent reasons. In such cases every effort will be made to prevent the charging of a commission by the new guardian on the corpus of the estate transferred.

(a) In asking for authority to employ a local attorney under this paragraph the chief attorney should give sufficient information to enable the chief attorney, branch office to determine what would be the approximate cost should the service be performed by the chief attorney, and in addition should state the name of the attorney whom he desires to employ and should indicate whether the attorney will perform the service for

a fee within the limitations of the schedule of fees. An attorney should not be employed to file a petition for an inquisition in lunacy except under the provisions of § 14.230. In other words, the chief attorney should not employ an outside attorney to perform the services which the chief attorney is not authorized to perform.

§ 14.238 *Appointment of guardian where claimant resides or is hospitalized.* The chief attorney will endeavor to secure the appointment of a guardian in the jurisdiction in which the claimant resides, or in which he is hospitalized, if in accordance with the State law.

§ 14.244 *Cooperation of chief attorney and chief medical officer relating to incompetents.* Before any steps are taken toward commitment of any incompetent beneficiary, or appointment of a guardian therefor, contact must be had with the chief medical officer, regional office or hospital to insure that such action is necessary. The chief attorney, through the chief medical officer, may request such examinations as may be necessary to establish the facts as to the competency or incompetency of the beneficiary. Close cooperation is essential. Any legal action desired by the medical service may be initiated through the chief attorney, and the latter will consult with the medical service in all cases involving the physical and mental welfare of the beneficiary.

§ 14.245 *Chief attorney to be notified of movement of hospitalized veterans.* The chief attorney will maintain close liaison with the managers of Veterans' Administration hospitals, officers in charge of other Federal hospitals, and superintendents of State and contract institutions, to the end that the chief attorney will be notified of admissions, commitments, trial visits, elopements and discharges of incompetent veterans. VA Form 10–2622, Information Regarding Movement of Persons Receiving Hospital Treatment, will be used by the managers of Veterans' Administration hospitals for this purpose, and more particularly in relation to the prescribed procedure to avoid interruptions of payments in cases of incompetent veterans on trial visits. This form will be sent by the manager to the chief attorney in whose area the hospital is located, who when indicated will forward the form to the chief attorney of the area in which the veteran is then residing. In the cases of eloped patients, every facility of the Veterans' Administration will be made available to the chief attorney in endeavoring to have such patients returned to the hospital in accordance with prescribed procedure.

§ 14.246 *Chief attorney to receive notice of discharge of committed cases.* The chief attorneys will solicit a like cooperation from the officers in charge of these institutions, to the end that no committed case will be discharged without the chief attorney being notified so that any court action necessary may be taken. In cases in which continued hospitalization is considered necessary by the manager, and the guardian or nearest relative desires that the beneficiary remain at the Veterans' Administration hospital or contract hospital, the manager will request the chief attorney to authorize commitment expenses. If commitment direct to the Veterans' Administration hospital is possible under the State law, the chief attorney will authorize such expenses and will assist in securing the commitment, subject to § 14.224.

§ 14.250 *Illegal commitment.* If it is discovered that a beneficiary has been illegally committed, and it is necessary to have him legally committed in order to give, or continue authorized care, steps will be taken at once to secure legal commitment.

§ 14.251 *Supervision of fiduciaries; legal services.* (a) Legal services, if desired by the guardian, may be supplied by chief attorneys' offices if the estate or income is not sufficient to justify the employment of an attorney and as provided in § 14.329.

(b) In any case falling within the provisions of § 14.366, where the guardian does not in due course institute the necsary action to terminate the guardianship, and the veteran requests the chief attorney to represent him, or in any such case where there is in question the proper administration of the veteran's estate, the chief attorney may file the necessary action and supply legal services. Costs, unless assessed against the guardian, should be charged to the estate of the veteran.

§ 14.252 *Schedule of attorneys' fees payable by Veterans' Administration.* Attorneys' fees payable under the authority of § 14.237 must be not in excess of the amounts stated below:

(a) Appointment of fiduciary for incompetent beneficiary:

(1) Where adjudication of incompetency or insanity is necessary:	
(i) Drawing petition and other necessary legal papers and court orders and including appearance:	
(*a*) No contest as to adjudication or appointment	$25.00
(*b*) Contest (jury trial, or other claiming precedence in appointment)	50.00
(ii) Each additional necessary appearance:	
(*a*) Simple motion	10.00
(*b*) Jury trial or other contest:	
(*1*) Per hour	10.00
(*2*) Per full court day	35.00
(2) Where adjudication not necessary (as in cases wherein beneficiary has been adjudged incompetent or insane):	
(i) Necessary legal papers, court orders, and appearance	15.00
(ii) If contest, add	20.00
(iii) Each additional necessary appearance:	
(*a*) Simple action	10.00
(*b*) Jury trial or other contest:	
(*1*) Per hour	10.00
(*2*) Per full court day	35.00

(b) Appointment of fiduciary for minors:

(1) Petition, court orders, and appearance	$15.00
(2) If contest, add	20.00
(3) Each additional necessary appearance:	
(i) Simple motion	10.00
(ii) Jury trial or other contest:	
(*a*) Per hour	10.00
(*b*) Per full court day	35.00

(c) Discharge or removal of fiduciary for incompetent or minor beneficiary, when such action is necessary and has been authorized by the solicitor:

(1) Preparing petition, or citation, and other legal papers and orders, and including appearance:	
(i) No contest (fiduciary willing to resign or be removed)	$25.00
(ii) Contest (fiduciary opposes removal)	50.00
(iii) Each additional necessary appearance:	
(*a*) Simple motion	10.00
(*b*) Jury trial or other contest:	
(*1*) Per hour	10.00
(*2*) Per full court day	35.00

NOTE: Any service rendered the retiring fiduciaries as preparation or/and filing of final account should be charged to the fiduciary, unless otherwise required by State law. Service rendered the estate, as collecting or securing assets of the estate or resisting claims against same, should be charged against the estate, and proper allowance made therefor by the court. No such service will be paid for by the Veterans' Administration.

(d) Appointment of substitute fiduciaries, or of fiduciaries in succession where necessary or authorized: Fees same as in (a) or (b) above, and to be in addition to those allowed for removal of fiduciary if attorney acts in both capacities.

(e) Citation to account or/and show cause why fiduciary should not be removed:

(1) Preparation of legal papers, orders, and including appearance	$15.00
(2) For each additional necessary appearance:	
(i) Simple motion	10.00
(ii) Jury trial or other contest:	
(*a*) Per hour	10.00
(*b*) Per full court day	35.00

NOTE: If fiduciary is removed, apply (c) above.

(f) If the State law requires the appointment of a guardian ad litem the statutory fee, or fee fixed by the court, may be paid as a part of the necessary court costs in cases wherein such costs are payable by the Veterans' Administration under the provisions of this paragraph.

(g) In exceptional cases amounts in excess of those prescribed by the schedule, or without reference thereto, may be allowed in the discretion and upon the written authorization of the chief attorney, branch office, or solicitor.

§ 14.260 *Determination of need for Institutional award and Notification to Adjudicating Agency.* The chief attorney will, upon receipt of VA Form 8–592, Request for Appointment of a Fiduciary, Custodian or Guardian, from the adjudication agency, determine the need for the appointment of a guardian or the adjudication of a case under the orders governing the making of institutional awards. In case the chief attorney deems an institutional award advisable, appropriate recommendation will be made to the adjudicating agency.

(a) When under prescribed procedure (Veterans' Administration Adjudication procedures) an institutional award and apportionment to dependents, if any, have been made in advance of reference to the chief attorney, upon receipt of VA Form 8–592, the chief attorney will make any necessary determination as to whether the institutional award and apportionment satisfactorily provide for the

veteran and dependents, or as to whether pawments should be made to the wife under § 14.201 (a). If the wife, or other dependents, reside in an area of a different regional office, the chief attorney will forward VA Form 8–592 to the chief attorney of that office. If the chief attorney determines that a special apportionment is proper he will submit any necessary information, with his recommendation as to the amount to be paid the dependents, to the adjudicating agency in the regular procedure. Any adjustment with reference to the institutional award will be taken up by or with the chief attorney in the area in which the hospital is located: If payments are made to the wife, the chief attorney having jurisdiction of the area in which the wife resides is the principal chief attorney for purposes of § 14.201 (a). In cases of this nature adjudicated in central office, or branch offices, VA Form 8–592 wil be forwarded to the chief attorney in the area in which the veteran is hospitalized and a separate VA Form 8–592 to the chief attorney in the area in which the dependents are located, if different from that in which the veteran is hospitalized.

§ 14.262 *Limitation of wards to individual guardians.* Where an individual is acting as guardian of the estate, or as guardian of the person and estate of the ward, except where such individual is acting as guardian for minors of the same family, the policy of the Veterans' Administration is to limit the number of beneficiaries on whose account payment shall be made to not more than five, and the cooperation of the courts will be sought to that end.

(a) Where an individual is acting as guardian of the estate, or of the person and estate of five wards, except minors of the same family, the chief attorney will not certify his appointment in any additional case.

(b) In those instances in which an individual has heretofore been recognized by the Veterans' Administration as guardian of the estate, or as guardian of the person and estate of more than five beneficiaries, except for minors of the same family, the chief attorney will take no further action if the administration of the estates, or of the persons and estates, is satisfactory in every respect. If conditions are not satisfactory, the chief attorney will notify the guardian accordingly, will advise him of the provisions of section 21 (1), World War Veterans' Act, as amended by Public No. 262, 74th Congress, with respect to the Administrator's discretionary authority to refuse payments, and will request the guardian to reduce the number of guardianships to not to exceed five or to remove the unsatisfactory conditions. The chief attorney will then report the facts, and results if any obtained, to the chief attorney, branch office, together with a recommendation as to what further action should be taken.

(c) If the appointment of the guardian is illegal in one or more cases, as in those States having a statute limiting the number of wards, the guardian will be removed in such cases.

(d) The policy stated herein will not be applied to public officials, who by reason of their office, are appointed as guardians in accordance with the State laws when such appointments are as to the office and not as to the individual incumbent of the position, such as clerks of courts and other similar officials, provided that separate guardianship bonds are filed in the case of each beneficiary in compliance with § 14.317.

§ 14.263 *Determination and certification of legality of appointment and adequacy of bond.* Before certifying as to the legality of an appointment, the chief attorney will determine whether the court had proper jurisdiction, ascertain if the proceedings were regular in every respect in accord with the State law, and see that the papers are in due form. He will then prepare and forward VA Form 2–4704, Certificate of Legality of Appointment and Adequacy of Bond, with the letters of guardianship to the adjudicating agency requesting the appointment for the purpose of payment. It will not be necessary to forward certified copy of bond, except in administration cases, but such bond will be filed in the guardianship file for ready reference thereto when accountings are rendered. Where the appointment is found to be invalid or the bond insufficient, appropriate action will be taken by the chief attorney to have same corrected.

§ 14.265 *Appointment to be certified when no evidence of invalidity.* If the guardianship appointment and all other records relative thereto are valid upon their face, and there is no evidence in the file indicating invalidity of such appointment, and there is no information available in the office of the chief attorney to the effect that the appointment is invalid, the appointment will then be certified.

§ 14.266 *Action by chief attorney when there is evidence of invalid appointment.* If the investigation of the files indicates that the appointment on its face is invalid, or if there is no evidence on the face of the appointment indicating its invalidity, but other evidence in file or information to the knowledge of the chief attorney indicates that the appointment is invalid, corrective steps shall be taken to bring about a valid and legal appointment.

§ 14.267 *When appointment invalid, action by chief attorney if beneficiary has moved to another jurisdiction.* If the beneficiary has moved from the jurisdiction and an appointment of a fiduciary can be legally made in the State of his present residence, the chief attorney in the jurisdiction of the court of appointment will take the initiative with the chief attorney having jurisdiction over the present residence of the beneficiary to effect a legal appointment.

§ 14.268 *Action by chief attorney when appointment invalid and beneficiary still in his jurisdiction.* If the beneficiary is still in the jurisdiction of the court of appointment, the necessary action will be taken to bring about a legal appointment, bearing in mind the possibility of having the present invalid appointment legalized by court order.

§ 14.270 *Action by chief attorney when family attorney procures appointment.* The chief attorney will make arrangements in current appointments where he is not preparing the papers to obtain copies of petitions and such other papers from the family attorney as will enable him to certify as to the legality without reviewing the court records subsequent to the appointment.

§ 14.271 *Medical officer to advise chief attorney when hospitalized veteran needs guardian.* To avoid duplication of work by hospitals and regional offices, and to enable the chief attorney to have at his command complete data before taking action in any case, officers in charge of Veterans' Administration hospitals will communicate directly with the proper chief attorney whenever it is found that a claimant who is in the hospital under his control is in need of a guardian. All available information bearing upon the case, particularly that with reference to the proper person to be selected as guardian, will be furnished by the hospital to the chief attorney.

§ 14.274 *Testamentary guardians.* The recognition of testamentary guardians is dependent upon State statutes.

§ 14.275 *Natural guardians; in the United States.* The common-law rule giving to guardians by nature power over the person only, and not over the property of the ward, is enacted by statute in most of the States; and where not so enacted, it is binding authority in every State recognizing the common law. (Woerner, American Law of Guardianship.)

§ 14.276 *Natural guardians, in the insular and territorial possessions of the United States and in Foreign countries.* In some of the insular and territorial possessions of the United States and in many foreign countries, natural guardians are recognized as guardians of both the person and the estate. (Laws of Insular and Territorial Possessions and of Foreign Countries.)

(a) Under section 21 (1) of the World War Veterans' Act, 1924, as amended, natural guardians may be recognized when it is shown by the laws of the insular and territorial possessions of the United States or by the laws of foreign countries that natural guardians are the constituted guardians by the laws of the State or country.

(b) A claim made by the natural guardian on behalf of a veteran's child for whom a legal guardian has not been appointed, shall be supported by the same statements as those required of a legal guardian. Accompanying such statements, the natural guardian shall set forth his or her relationship to the child and all other facts on which he or she bases the right to act as natural guardian of the child.

§ 14.277 *Effecting recovery of overpayments or illegal payments to fiduciaries, and "post fund" cases.* When it has been determined that there has been an overpayment or an illegal payment

and the particular case has been acted upon by the proper committee on waivers and all efforts to effect recovery from the fiduciary for the estate of the living or deceased person in accordance with the finance procedure have been unsuccessful, the finance officer in the regional office or Veterans' Administration hospital will forward a complete statement of the facts with reference to the overpayment or illegal payment to the chief attorney for attention. The chief attorney will immediately communicate with the fiduciary in an effort to secure a refund of the overpayment or illegal payment and will assist the fiduciary in obtaining any order of the court necessary for this purpose. The chief attorney, if necessary, will make informal contacts with the court of appointment with a view to effecting an order of the court directing the fiduciary to return the amount of the overpayment or illegal payment, but in no instance will the chief attorney institute a suit by filing a petition in the name of the United States for this purpose. When all reasonable efforts on the part of the chief attorney to effect recovery have been unsuccessful, a full and complete report will be submitted to the office of the solicitor, through the chief attorney, branch office, setting forth the facts pertaining to the overpayment or illegal payment, the efforts made to effect recovery, the balance of the estate in the hands of the fiduciary and the ability of the fiduciary to make the refund, in order that the particular claim may be referred to the Department of Justice for appropriate attention. A similar procedure will be followed with respect to overpayments or illegal payments under the jurisdiction of central office or branch offices and the director of finance services will refer such cases to the office of the solicitor in central office cases and the chief attorney, branch office, in branch office cases, for reference to the chief attorneys.

(a) *"Post fund" cases.* Act of June 25, 1910, as amended by Public Law 382, 77th Congress (38 U. S. C. 17). (See § 12.23 of this chapter.)

SUPERVISION OF CUSTODIANS, GUARDIANS, ETC., AND CHIEF OFFICERS OF INSTITUTIONS

§ 14.282 *Rights of wards.* The duty of the chief attorney is not to check the work of the Veterans' Administration with regard to the rights of its wards, but to cooperate with each of the other divisions concerned in establishing those rights. The chief attorney will determine that the guardian, or other responsible person, has filed a claim for all possible benefits. In those cases in which benefits are paid by the Veterans' Administration to an administrator or executor of the estate of a deceased beneficiary, the chief attorney will see that the guardian of any beneficiary receiving other payments direct from the Veterans' Administration, who is entitled to share in the distribution of the estate of the deceased beneficiary, files claim with the administrator or executor for the share to which the beneficiary under guardianship is entitled, and that such funds when received are accounted for by the guardian.

§ 14.290 *Principal attorney.* Cooperation with other chief attorneys is absolutely essential when the ward, or beneficiary, is in the territory of one regional office, while the guardian or proposed guardian, and the appointing court are in the territory of another regional office or of other regional offices. For proper operation of guardianship procedure, however, it is essential that the guardianship file, accounting records, etc., be maintained in the office within whose territory the court having jurisdiction is situated. The chief attorney within the jurisdiction of the court will be the principal in all such cases. He may secure from the chief attorney where the ward resides such social survey reports and other data as may be necessary. In the event he cannot secure an accounting from a nonresident guardian, he may secure from the chief attorney where the guardian resides such information as may be necessary to enable him to check the account and make proper representation to the court. In forwarding the information requested, the chief attorney where the ward or guardian resides may make such recommendation as may seem proper, but the determination of the case will remain with the chief attorney within the jurisdiction of the court. If payments are to be suspended, or if action against, or for removal of, the guardian is to be instituted, such action will be taken only by him.

(a) If the guardianship appointment has been, or is to be, made in a foreign country, other than the Republic of the Philippines, or in one of the possessions of the United States, other than Alaska, Hawaii, and Puerto Rico, or if the appointment is in this country, but the ward or his dependents reside in any foreign country or other possession, cooperation will be with the office of the solicitor.

(b) In making requests on chief attorneys of other regional offices, the chief attorney will keep in mind the limitations under which such work must be performed, and will, as far as possible, make such requests conform to the established program of the other office.

§ 14.291 *Award information to chief attorney.* The adjudication officer in the office having jurisdiction of the claims folder will supply the chief attorney with detailed information each time any change is made in an existing award to an incompetent or minor beneficiary, in whose behalf payments are going forward to a legal guardian or custodian, or wife of an incompetent veteran. In those cases where the guardian, custodian or wife was appointed or recognized in another jurisdiction, the chief attorney is charged with the duty of immediately forwarding such information to the chief attorney having principal jurisdiction over the guardian, custodian or wife. Unless this information is furnished simultaneously with the change made in the award, the principal chief attorney is unable to supervise properly the guardian or custodian and the accountings made or determine any required action in cases of payments to a wife of an incompetent veteran. Chief attorneys will take proper action to establish the necessary procedure in their offices for the furnishing of this information to the principal chief attorney immediately upon the change of any award existent in the case of a beneficiary having a guardian or custodian, or in which payments are being made to a wife of an incompetent veteran.

(a) A similar procedure will be followed in cases under the jurisdiction of central office or branch office to insure that notices of changes in awards will be supplied the chief attorney having principal jurisdiction over the guardian, custodian or wife of an incompetent veteran.

§ 14.293 *Chief attorney to coordinate services to accomplish social surveys.* In accomplishing the social and economic survey of awards, the chief attorney will utilize the social workers, coordinating same with the chief medical officer and will avail himself of and coordinate the services of cooperating agencies. The chief attorney will maintain close contact with the chief medical officer to insure that duplication will be avoided.

§ 14.294 *Veterans' Administration employee to make initial social survey.* A social survey will be made initially in each case by a Veterans' Administration employee; thereafter they will be made only as necessity requires. Arrangements should be made to secure intermediate reports from responsible individuals or social agencies.

§ 14.295 *Social surveys to be obtained on patients in State and private institutions only.* Social surveys will be made if veteran is in State or private institution; but not if veteran is in a Government institution.

§ 14.296 *Duty of chief attorney to obtain social survey.* Subject to the above, chief attorneys are charged with the duty of securing social survey reports in all guardianship and legal custodianship cases and cases in which payments are being made to a wife of an incompetent veteran; and to see that funds are properly applied to the beneficial interest of the ward.

(a) The policy as stated is to secure a complete survey, initially, on every ward on whose account payments are being made. As a result of the conditions found, cases fall naturally into two general classes. One, those in which it may naturally be expected that the satisfactory conditions will continue indefinitely, and two, those wherein unsatisfactory conditions are shown to exist.

(b) With regard to the former, the chief attorney is authorized thereafter to waive the social survey in connection with subsequent annual accountings if satisfied that conditions are satisfactory. He secures information in various ways, sometimes through informal contacts, often through some local official or member of a cooperative agency. If any question arises, however, he must necessarily secure a social survey showing the exact facts.

(c) The second class is much more difficult. If the adjustment indicated is one that can be accomplished through the guardian or the court the chief attorney takes such action as may be nec-

essary. This usually involves financial matters and may require, in extreme cases, the removal of the guardian and the appointment of a satisfactory successor. Frequent follow-up is often necessary to insure that the adjustment is actually accomplished. These contacts are usually made by field examination personnel or social workers.

(d) Frequently, however, the adjustment indicated as desirable involves a real social problem, one requiring intensive and extensive study and follow-up by a qualified social agency. This may be either a public or a private organization. Such cases which involve action beyond any authority of the Veterans' Administration are referred to welfare agencies for such intensive case work as may be necessary or possible. To avoid duplication of effort, and any consequent apparent harassment through too numerous visits, the Veterans' Administration generally follows up on such cases only after the particular agency advises the chief attorney that the case is no longer an active one. Of course, in exceptional cases a survey is secured if and when needed. Usually the reports of the agency are sufficient.

§ 14.300 *Account books.* Suitable account books and forms wherein to render accounts will be supplied fiduciaries. (But not to banks unless requested.)

(a) Prior to distributing these books, the provisions of the law of the particular State pertinent to guardianship will be prepared by the chief attorney and recorded in the space allotted for that purpose.

§ 14.301 *Disposition of account books.* After the account book, properly executed, has been received by the chief attorney from the fiduciary in those cases wherein legal services are authorized, a careful audit of all items made, and the accounting submitted to the court, a summary of the account consisting of all information and data required should be made for the chief attorney's records on VA Form 2–4707, Summary of Account. When the records have been completed in this respect and the account book is not further required, it will be returned to the fiduciary. Any irregularities observed in the account book should be called to the attention of the fiduciary, together with any instructions which the chief attorney may deem necessary. The fiduciary should be advised that the account book should be retained by him until he has been discharged and his final accounting approved by the court.

(a) *Certified copies of guardians' accounts.* If the chief attorney states the account for the guardian he may retain a copy; otherwise, and especially in those States wherein the law requires that the chief attorney be supplied with a copy of the guardian's account, the chief attorney will insist upon being supplied therewith. If the cost of certification is excessive, the chief attorney may dispense with same providing he is satisfied the copy supplied is a true copy of the account as filed, or otherwise is able to verify same by comparison with the public records.

§ 14.305 *Accounting not required.* The maintenance of a guardianship file and an accounting record, and the securing of an accounting from the legal custodian or other fiduciary will not be required in cases in which the only payment to the legal custodian or other fiduciary on a monthly basis does not exceed $5, or in cases in which the only benefit payable is an accrued amount in a lump sum of $100 or less, or in cases where the accrued amount payable is $100 or less and the monthly payments do not exceed $5. All active cases falling within these provisions will be closed at the time the next accounting is due or after all unsatisfactory guardianship matters in any such cases have been finally adjusted. New appointments of fiduciaries in cases falling within the above provisions will be counted as received and released during the same month by the chief attorney on the monthly report submitted to central office. In States in which accountings of guardians are not waived by the courts and copies thereof are furnished the chief attorney under the provisions of the Uniform Veterans Guardianship Act, or similar legislation, the chief attorney will continue supervision over the guardian and the provisions of this section will not be applicable in such cases.

§ 14.310 *Accounts of custodians.* Except in those cases where accountings are not required as explained in § 14.305, the chief attorney will secure an annual accounting, using VA Form 2–4706a, Accounting Form for Use by Legal Custodians of Minor and Incompetent Beneficiaries of the Veterans' Administration, from each custodian within the territory of his regional office. Custodians-in-fact recognized under the provisions of section 21 (3), World War Veterans' Act, as amended, and § 14.205 (a) will be required to render accounts for any period of time they receive payments, showing the actual application of the funds received for the benefit of the beneficiary. If payments are made or resumed to the fiduciary, a copy of the custodian's-in-fact account may be supplied the appointing court if desired by any party in interest.

§ 14.311 *Suspension of payments to custodians.* If the custodian refuses to render an account, or if the account rendered is unsatisfactory and an adjustment cannot be secured, the chief attorney will have payments suspended until a guardian is duly appointed.

§ 14.312 *Legal custodian may be required to furnish bond.* In any case, the chief attorney, regional office or center, the solicitor or chief attorney, branch office, may require that such custodian furnish a sufficient bond with satisfactory security. (See § 14.210.)

§ 14.313 *Annual report of custodian.* A written annual report from the legal custodian to whom payments are being made will be required. Such report will be secured by the chief attorney of the regional office in whose area the custodian resides, and will contain a statement showing the facts as required in paragraphs (a) (2), (3), (4), (5) and (8) of § 14.206, and in addition will set forth the total amount received, disbursed, balance on hand, and bond, if any.

§ 14.314 *Location of legal custodial file.* Should the legal custodian move to another area, the custodial file will follow the custodian, and the responsibility for the supervision of the accounts of the custodian will be vested in the chief attorney in whose area the custodian resides.

§ 14.315 *Management and use of estates of incompetents.* Guardians of insane beneficiaries should expend funds received for the comfort and care of their wards. While the estate should be protected in every way, the comfort of the insane beneficiary and his dependents is the primary object. Where merely unwise expenditures have been made, involving no fraud, the chief attorney will take such action regarding an adjustment as will be to the best interest of the beneficiary and his dependents. In case of unwise investments, every effort will be made to safeguard the interests of the ward.

§ 14.316 *Management and use of estates of minors.* Guardians of minor wards, and custodians, will be urged to accumulate an estate for the ward, if possible. This is particularly true where some person is responsible for, and able to supply, immediate needs. The object of supervision is to see that the funds are used, or conserved, for the benefit of the minor.

§ 14.317 *Bonds and sureties.* (a) In exercising supervision over the administration of estates of minor and incompetent beneficiaries of the Veterans' Administration by their fiduciaries, as authorized by the acts of Congress, it will be the policy of the Veterans' Administration to require corporate surety bonds in each guardianship case in which the fiduciary is an individual. In cases of corporate fiduciaries corporate bonds will be required except in those States the laws of which specifically exempt corporate fiduciaries from furnishing bonds and do not vest discretion in the courts with respect to requiring bonds. The adjustments in this matter of furnishing corporate surety bonds may be made at such time as the annual accounting is rendered to the Veterans' Administration and/or the court. In cases wherein guardians neglect or refuse to furnish corporate bonds as requested by the chief attorney, the chief attorney may decline to open or continue payments to such guardians until and unless the appointing court has passed formally on the question whether such bond should be supplied.

(b) In any case where it is impossible for the fiduciary to obtain a corporate surety bond, or where the amount of the estate or of benefits payable is so small as not to justify the expense of a corporate surety bond (as in cases in which the estate does not exceed $1,500 and in which payments are not continuing, or would all be used as received for the support of the ward), the chief attorneys are authorized to accept bonds with at least

two personal sureties upon receipt of definite evidence that each such surety owns real property, over and above all liens and encumbrances, at least equal to the penal sum of the bond and qualifies in accordance with the requirements of the State law in which the guardianship is pending. In such instances, and those wherein the court declines to require a corporate surety bond, the fiduciary will be required to furnish with each accounting definite evidence as to the financial status of the personal sureties and, where any question arises as to the ability of such personal sureties to meet any probable liability, the chief attorneys will investigate their responsibility and will promptly authorize suspension of payments as provided in § 14.363 (a), until satisfied that the personal sureties are responsible, as provided in this paragraph. If such an investigation discloses that the personal sureties do not meet the requirements stated herein, corporate surety bonds will be secured if possible. Additional or increased bonds will be required at each accounting period commensurate with the value of the estate and the chief attorneys will be responsible for seeing that action is taken with the court to assure that adequate bond with good surety or sureties is in effect.

(c) If any surety company is placed in receivership or ceases to do business in the particular State, the chief attorney will take the necessary action to have proper bonds substituted in each case. In the case of receivership, bankruptcy, or other proceedings to conserve the assets, or wind up the affairs of a corporate surety, the chief attorney will ascertain the termination date for filing claims with local and general receivers or other designated officials and see that all adjudicated and contingent claims are filed in time to receive proper classification and allowances.

§ 14.320 *Joint control agreements.* With reference to joint control agreements the Veterans' Administration will take no part in effecting such agreements, inasmuch as it is thought that this is a matter for the determination of the bonding company and the contracting fiduciary.

§ 14.321 *Investments; inspection of assets.* (a) The chief attorney will see that funds held by the fiduciary are invested in accordance with State laws if there be any provisions thereof governing such investments. If asked to recommend investments he will inform the fiduciary as to legal investments under the appropriate State laws, if any, but will state that the Veterans' Administration cannot recommend anything but United States Government bonds.

(b) In accomplishing the policy of the Veterans' Administration with reference to investments, extreme care must be exercised by all employees in the chief attorney's office, in advising fiduciaries relative to investments:

(1) No preference shall be given to any bond dealer, or investment broker, nor any recommendation with reference thereto.

(2) As between investments legal for trust funds, no preference or recommendation shall be made by the chief attorney's office, except of United States Government bonds, as stated above.

(3) If a specific investment is made legal by State statute the chief attorney will advise fiduciaries or the courts with respect to any known doubtful or undesirable characteristics which might jeopardize the safety of the beneficiary's estate.

(4) Each fiduciary will be advised by the chief attorney to furnish definite information to his office as to the class of securities in which it is proposed to invest surplus funds, before making such investment; and where petitions are filed with the court for authority to invest, the chief attorney will arrange with the guardian and/or the court to furnish his office a copy thereof before or at the time the same is submitted to the court. If investment is made in real estate or mortgages thereon, in jurisdictions where such investments are legal, the chief attorney will see that the petition for authority to invest sets forth a complete description of the property, the name of the seller or mortgagor, and all other information necessary to a determination that the investment is proper, the security adequate, and that same is being made in accordance with the law of the jurisdiction. In making such investments, the chief attorney will see that the fiduciary follows strictly the provisions of law with reference to appraisal of the property, examination of the title by his attorney or title company, etc., in order that the court may be fully informed before authorizing same. In the event the chief attorney is not furnished a copy of the petition and the investment is first noted in the fiduciary's accounting, the chief attorney will see that such investments are properly set out in the account, with complete information as to the property, etc., as above outlined. When there is any doubt as to the propriety of such investment, the chief attorney will make an investigation and obtain such facts and information as will enable the court properly to pass upon the matter and will object to such investments when it is shown that the security is inadequate, or when any self-dealing by the fiduciary may be involved, or when such investments may not be legal or in the best interest of the beneficiary. The chief attorney should ascertain that each deed, as well as mortgages and other lien instruments and extensions thereof, is promptly filed and recorded. If possible, arrangements should be made to have the fiduciary furnish the chief attorney at the time such deed, mortgage or extension is filed for record a certificate from the county clerk, register of deeds, or other recording official, to the effect that the instrument has been filed for record, giving the date of filing and the volume and page number of the record of the county. When this procedure is not effective the information should be obtained from the fiduciary by correspondence or by a field examiner when in the vicinity of the court on other business. In those States, the laws of which do not specifically permit investments in mortgage participation certificates, or mortgage bonds, or other obligations secured otherwise than by the entire estate in a first lien on real property encumbered to secure such loan, the chief attorney will object to investments therein. In those jurisdictions, the laws of which specifically authorize the types of investments last mentioned, no objection will be interposed thereto, if made in conformity with the applicable statutory requirements and there is no objectionable element of self-dealing by the fiduciary or otherwise.

(5) Where investments are made in bonds, the fiduciary will be required to furnish information as to serial numbers, kind of bonds, rate of interest, the date of maturity and security, if any. In the case of United States Government bonds it is highly desirable that such investments be in the form of registered bonds and the bonds should be registered, unless for good cause shown such registration would be undesirable or unnecessary. The advisability of registering such bonds is stated in paragraph 5, Regulations of United States Treasury Department. (Department Circular No. 300, July 31, 1923 as amended) as follows:

> Registration protects the owner of a United States bond from loss or theft, and holders generally are urged wherever practicable to take advantage of the privilege of registration, particularly in cases where adequate facilities are not available for the safekeeping of coupon bonds. No relief can be given in case of the loss or theft of a coupon bond, but in case of the loss or theft of a registered bond, unless assigned in blank or for exchange for coupon bonds without instructions restricting delivery, the Treasury Department will give relief to the owner in accordance with the provisions of paragraphs 83 to 85 of these regulations. Holders of registered bonds receive interest checks drawn on the Treasurer of the United States in payment of interest as it falls due, and their names are all recorded on the books of the Treasury Department.

The chief attorney will advise each fiduciary to keep such bonds in a safe depository under the control of the fiduciary, in order to avoid loss through theft or otherwise. At the time the annual accounting is furnished the Veterans' Administration or filed with the court, the chief attorney will require that the fiduciary furnish definite evidence to the Veterans' Administration or the court, that the bonds or other securities in which the funds have been invested are so deposited under the control of the fiduciary. VA Form 2–4709, Certificate as to Securities, may be used for this purpose. In the event of the failure of the fiduciary to furnish such evidence, the chief attorney will make appropriate investigations and take such formal court action as may be required to protect the interests of the beneficiary. This provision contemplates that an annual inspection of the securities in each estate under guardianship will be made by the chief attorney's office; provided that the requirements of this provision as to inspection of the assets shall be considered to have been met:

(i) If the guardian exhibits the securities in his possession to the court or an officer or appointee thereof and furnishes a certificate from the court or the clerk thereof to that effect;

(ii) If there is furnished a certification from an official of the depository,

non-associated with the guardian, with which the securities are deposited for safekeeping;

(iii) If a certificate is furnished by a surety company or its agent showing that the securities are in the possession of such surety company or have been exhibited to the company or its representative by the guardian;

(iv) If a sworn statement showing the securities have been exhibited to him is submitted by an official of the bank or trust company acting as guardian, such official being one other than the trust officer or other official verifying the account filed with the court or the Veterans' Administration.

(6) The chief attorney will require each legal custodian to invest, except as qualified in paragraph (d) of this section, in United States Government bonds all funds received from the Veterans' Administration not needed for the current or contemplated support of the beneficiary.

(c) The chief attorney will formally object to a fiduciary's failure to invest surplus funds and appropriately invoke action by the court thereon. Similarly, objection will be made to illegal investments attempted to be made, or shown in current accounts. Whenever the fiduciary attempts to take credit for any loss due to an illegal or questionable investment, or in cases of final accountings, the chief attorney will formally object thereto for the purpose of having the question of liability settled by the court. This will apply likewise to funds on deposit in a closed bank or other depository, where there is any legal objection or question as to liability. Extreme care must be exercised in those jurisdictions holding that a current or intermediate accounting is res adjudicata, or that approval of an intermediate accounting constitutes an approval of the investments appearing therein.

(d) (1) In connection with the matter of investments questions have been raised as to the policy of the Veterans' Administration with respect to the investment of surplus funds on deposit in banks which are members of the Federal Deposit Insurance Corporation authorized by the Banking Act of 1933, 12 U. S. C. 264, or building and loan associations insured by the Federal Savings and Loans Insurance Corporation, 12 U. S. C. 1725. Generally speaking, the law cited will not be material in those States, the statutes of which specifically require investment of trust funds in designated securities, and guardians or other fiduciaries should comply with the State statutes as to investments.

(2) In those jurisdictions where, in addition to specifying the types or kinds of securities in which fiduciaries may invest trust funds, discretion is vested in the court of appointment or the fiduciary of choosing within the specified types or in making other investments, the chief attorney need not except to an order of the court permitting or requiring fiduciaries to leave trust funds on deposit in banks or building and loan associations which conform to the provisions of the law above mentioned and within the amounts protected thereby.

(3) The fact that the deposit is insured in accordance with the Federal laws above mentioned does not affect the status of the deposit, but merely provides limited indemnifications upon loss by failure of the depository.

(4) In those States requiring investment of trust funds in "securities" a deposit in a bank is not such an investment as conforms to such requirement. Such deposits, in order to draw interest, must be time or savings deposits not payable on demand. Hence, they are not as available for immediate needs as are Government bonds, which also usually yield a higher return. These facts should be brought to the attention of the guardian and court in proper cases.

(e) Filing of claims for funds in closed bank, priorities, etc., is the responsibility of the fiduciary. The duty of the chief attorney is to see that the ward's estate is protected against any claim for credit for loss occasioned by failure of the fiduciary properly to carry out his fiducial duties, and to cooperate by giving such general advice and suggestions as may be appropriate.

(f) From the above it will be noted that the Veterans' Administration policy with respect to bonds and investments should be made effective in the highest degree, to the end that beneficiaries' estates will be currently conserved. Any factors or events preventing accomplishment of this program should be reported to the solicitor through the chief attorney, branch office, for determination of any need for further legislative consideration.

§ 14.322 *Accounting by guardians; forms to be used.* Except in cases where accountings are not required as explained in § 14.305, accountings will be obtained at least once a year by the chief attorney from all guardians of Veterans' Administration beneficiaries appointed by the courts within the territory of his office. These accountings will be obtained direct from the guardian. When the State courts require accounting once a year the chief attorney will advise the guardian 30 days prior to the date his account is due in the court of appointment, and forward at the same time three copies of VA Form 2–4706 series. The original may be used by the guardian in submitting his account to the court, and a copy forwarded to the chief attorney duly certified by the clerk of the court as a true copy of the account filed with the court, together with a certification from the bank or trust company in which the estate of the ward is deposited showing a balance, and certificate regarding inspection of assets as provided in § 14.321 (b) (5). The third copy may be retained by the guardian. VA Form 2–4706c will be used in lieu of VA Form 2–4706, in those regional areas where the use of VA Form 2–4706 is not practicable. In case these VA Forms 2–4706 or 2–4706c cannot be used in the court, the chief attorney will prepare a form suitable to meet the requirements of the State statute or will use regular form supplied by court, and will require that the guardian forward a copy of the form of account as submitted to the court with the certificates of bank balance and inspection of assets at the same time the original is filed with the court. As stated above, accountings will be secured in all cases at least once a year, unless waived pursuant to existent instructions.

§ 14.324 *Arrangements in calling accounts.* The arrangements in calling for the accounts in all cases will be such as to have the date that the Veterans' Administration desired an account coincide with the date on which such accounts are required by the court.

§ 14.325 *Notice to chief attorney of the filing of petitions for account, etc.* Where the State laws permit, arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to guardianship cases wherein the Veterans' Administration is interested, will be sent to the chief attorney. If this is done, the court will be notified in due time whether the Veterans' Administration has any objections to offer. Minor objections may be brought to the attention of the court informally; other matters by formal exception or objection. If there be no objection a stamp may be used, reading, "No objection, approval recommended."

§ 14.326 *Action upon receipt of account; action where funds escheat to United States.* As soon as the account is received in the office of the chief attorney, it will be attached to the correspondence file and forwarded to the fiduciary accounts analyst, who will analyze the account. Receipt of the account will be duly recorded on the account due card, VA Form 2-3526, and the card will be filed as a diary for the succeeding year. If the account is proper in every respect, the same may be stamped, as stated in § 14.325. While accounts are examined and briefed by fiduciary accounts analysts, they will be passed upon finally only by the chief attorney or other attorney.

(a) In cases falling under the provisions of Public Law 662, 79th Congress, the chief attorney will determine whether the account shows that the veteran's estate derived from any source equals or exceeds $1,500 and if so, will immediately notify the adjudicating agency of such fact; and in those cases in which the award has been discontinued under the provisions of Veterans Regulation No. 6 (a), paragraph VI (B'), as amended (38 U. S. C., ch. 12), or Public Law 662, 79th Congress, the chief attorney will determine whether the account shows that such estate has been reduced to $500, and if so, will immediately notify the adjudicating agency of such fact. The value of the assets of the insane veteran's estate derived from any source will be determined in accordance with the following principles:

(1) Real estate, the assessed value for tax purposes, except where the State law provides it shall be assessed at a specified percentage of its market value, in which event the market value will be ascertained and used. For example, the State law provides real estate shall be assessed for the purpose of taxation at 75 percent of market value, the market value for the purpose of this legislation will be one

and one-third times the assessed value. Of course, if the State law provides real estate shall be assessed at its market value then the assessed value will be used. If real estate is encumbered, or the veteran is a co-owner, his equity or proportionate interest only should be used in determining the value of his estate. Where the application of this principle would result in hardship such as the forced sale of an unfair valuation of the real estate, particularly noninc-ome-producing real estate, the facts will be reported to the chief attorney, branch office, for consideration.

(2) United States savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value including accrued interest will be used.

(3) Bonds and stocks, the current price listed on recognized stock exchange will be the value to be used.

(4) The following will not be included as assets:

(i) Adjusted service certificate.

(ii) Insurance policy having cash surrender or loan value.

(iii) Personal property such as furniture and household equipment, working tools, livestock, and jewelry.

NOTE: Cash in the estate will be considered notwithstanding it was derived from any of above excluded items.

(b) In the event of the death of a beneficiary under guardianship, the chief attorney will secure from the guardian a final account showing the amount, if any, of funds held by the guardian derived from payments of compensation, pension, retirement pay, automatic or term war risk insurance, or gratuitous or five-year convertible term National Service Life Insurance for the purpose of determining whether the estate will escheat to the United States pursuant to the last proviso of section 21 (3) of the World War Veterans' Act, 1924, as amended (38 U. S. C. 450). The chief attorney will ascertain whether administration will be had on the estate of the deceased veteran, and also whether there are any heirs. If there are no heirs, he will report the facts to the appropriate adjudication service of central or branch office, and, in the case of an institutional award, to the chief officer of the institution. In such cases, the balance held by the chief officer of the institution will be returned to the Treasury in accordance with finance procedure, and any other funds held by the Veterans' Administration or in the "Funds Due Incompetent Beneficiaries" to the veteran's credit will be likewise deposited in the Treasury. In cases in which there are no heirs coming within the last proviso of section 21 (3) of the World War Veterans' Act, 1924, as amended, the chief attorney, wherever possible, will endeavor to effect the return of the estate in the hands of the particular fiduciary to the United States, in connection with the final accounting of the fiduciary, or in any manner which may be possible under local procedure and practice, and will submit a report of all such cases to the office of the solicitor through the chief attorney, branch office. The chief attorney will not institute suit by filing a petition in the name of the United States for this purpose, but when such action becomes necessary the matter will be submitted to the Department of Justice by the solicitor upon receipt of the report from the chief attorney. The chief attorney will cooperate with the United States attorney, upon request, in any endeavor to effect the collection of such funds.

§ 14.327 *Information to satisfy discrepancies in accounts.* In all cases in which the account cannot be passed without objection by the chief attorney, it will be incumbent upon him to obtain information to satisfy the discrepancies and to make such arrangements as are necessary with the guardian and/or the court to have the account restated and thus prevent unnecessary court appearances for the purpose of filing exceptions. Exceptions will be filed only when arrangements cannot be made with the court and the guardian to have the account restated prior to the date of settlement.

§ 14.328 *Chief attorney authorized to file exceptions and to institute other legal proceedings.* Chief attorneys are vested with authority to institute necessary legal proceedings to cite guardians to account, to file exceptions to their accounts to cite guardians to file bonds, to require investments, to petition the court to vacate or modify orders or to remove guardians, or to institute other action necessary to secure proper administration of the estate by the fiduciary, and to incur the necessary court costs, including witness fees, and other expenses in connection therewith.

§ 14.329 *Branch chief attorney to authorize costs of legal action under second proviso of section 21 (2) of the World War Veterans' Act, as amended (38 U. S. C. 450).* (a) The chief attorney, branch office, upon receipt of a report from the chief attorney showing the necessity for instituting legal procedure in accordance with the second proviso of paragraph 2, section 21, World War Veterans' Act, as amended, may authorize the chief attorney to take such action and to incur necessary costs.

(b) Any such costs paid by the Veterans' Administration will be recovered if possible from the adverse party, and deposited into the Treasury as miscellaneous receipts.

§ 14.330 *Action where account cannot be approved or proper administration of estate may not be secured.* In cases in which the account cannot be passed because objectionable under § 14.327, the exceptions filed should be sufficient, if sustained, to show the incompetency of the guardian, and unless the court by its own motion will automatically remove the guardian, or proper administration of the estate may not be secured otherwise, the chief attorney is authorized to institute action to remove the guardian, to secure the appointment of a qualified successor, and to pay the costs in connection therewith. In case the account or other evidence shows that there has been misappropriation or embezzlement of funds, or other violation of section 2, Public No. 262, 74th Congress, the chief attorney will submit the case to the United States attorney. It will be incumbent upon the chief attorney in all cases to have the substitute guardian proceed against the guardian and surety.

§ 14.331 *Commissions of guardians, and attorneys' fees.* Adjustments will be made informally, if possible, to avoid excessive allowances, expenditures, attorneys' fees or guardians' commissions. When necessary, formal objections will be filed to illegal fees or commissions in excess of those allowed by law. The Veterans' Administration policy is that commissions should be reasonable for services performed, and that except in the event of unusual services such commissions should not exceed 5 percent of the income.

§ 14.332 *Guardians' commissions under the Uniform Veterans Guardianship Act.* In order that the chief attorneys, in those States which have adopted the Uniform Veterans Guardianship Act, may cooperate more effectively with the courts in carrying out the intent and purposes of said act, the following instructions will apply.

(a) Upon receipt of a notice that the guardian has filed a petition alleging unusual services and praying for an allowance in excess of 5 percent of the income during the accounting period, the chief attorney will determine whether the petition should or should not be contested. He will then notify the court, before the date when hearing may be had, of the position of the Veterans' Administration on the matter. If no objection is to be raised, the court will probably proceed without a hearing. If objections are to be raised by the Veterans' Administration it will be necessary for the chief attorney to be represented at the hearing.

(b) In any case wherein the chief attorney desires to recommend an appeal, a full report should be made by letter in accord with the provisions of § 14.333 (b).

§ 14.333 *Appeals, cost of, may be paid.* It is obvious that to be successful in an appeal the ground work must be well laid. In the first instance the petition, or other legal paper filed should show the exact basis whereon the action of the Veterans' Administration is predicated, and that such action is pursuant to the Federal law, and a function necessary to the discharge of the responsibility placed upon the Administrator by the Congress. If there be any State statute applicable, and this is true in many States, advantage should be taken thereof, and such statute should be relied upon as well as the Federal statute.

(a) It is obvious too that, from the point of view of establishing a precedent, an appeal should be taken in no case unless the facts are such as to bring the case strictly within the language of the act, i. e., the fiduciary is not "properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents

of the ward," and the court has arbitrarily allowed fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred. The conditions adopted by the Veterans' Administration pursuant to section 21, World War Veterans' Act, 1924, as amended, are that commissions in excess of 5 percent of the income received during the accounting period are inequitable unless unusual services, i. e., services beyond those ordinarily required of a guardian, have been performed.

(b) No appeal to a district or other court where the trial is de novo will be filed and no costs in connection therewith authorized without prior approval of the chief attorney, branch office. No appeal to an appellate or supreme court will be filed and no costs in connection therewith authorized without prior approval of the solicitor—these to be referred by the chief attorney through the chief attorney, branch office, to the solicitor. In any case wherein the court overrules the petition or motion filed by the chief attorney, under the provisions of section 21, World War Veterans' Act, 1924, as amended, and an appeal is believed necessary to protect the estate of the Veterans' Administration beneficiary, the chief attorney will report all the facts to the chief attorney, branch office, and will make a definite recommendation regarding whether an appeal should be taken. The statement will show the termination of the appeal period, i. e., the date by which the appeal must be filed and the probable cost of the appeal.

(c) If after consideration of such report and recommendation, an appeal is authorized, the chief attorney will immediately take the necessary action to perfect the appeal. In the event printing costs must be incurred in the preparation of the appeal, appropriate requisition should be submitted to the supply service, central office, as soon as the cost of printing is ascertained, in order that authority may be granted therefor, the cost of the printing being chargeable to central office allotment. In such cases, if appeal bond is required, the chief attorney, as the attorney for the Administrator of Veterans Affairs, is authorized to sign such bond for the Administrator. If time permits the chief attorney will supply the chief attorney, branch office, with the record (if same must be printed) and with the proposed brief before filing; otherwise copies will be forwarded immediately after filing. The chief attorney will maintain a docket on such cases.

§ 14.334 *Accounts of banks and trust companies.* Relative to accounts rendered the Veterans' Administration by banks and trust companies, advice is given that bank and trust companies acting as fiduciaries of Veterans' Administration beneficiaries will not be required to submit receipts, vouchers, or canceled checks with accountings rendered the Veterans' Administration provided the books and records kept by such banks and trust companies are open to inspection at all reasonable times by accredited representatives of the chief attorney's office.

§ 14.339 *Claims of creditors.* (a) Section 3, Public No. 262, 74th Congress, applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. The language of the section has been construed by the Supreme Court of the United States to the effect that such exemption does not extend to property in which the proceeds of such payments are or may be invested. (Bryant v. Carrier, 306 U. S. 545)

(b) The statute makes no distinction between claims of creditors arising before or after the appointment of a fiduciary, or before or after adjudication of insanity. Proper expenses incurred by the fiduciary, after appointment, and in accordance with law are obviously not comprehended by the statute. The fiduciary should invoke the defense of this statute against all other claims of creditors including judgment creditors . If he does not do so, the chief attorney will raise the issue by proper plea. If, after being advised fully as to the facts and the law, the court allows payment of the claim or debt out of such funds, the chief attorney will protect the record for possible review of the court's decision and submit a report to the chief attorney, branch office, with a recommendation as to any further action considered advisable provided that if payment of the claim would be advantageous to the ward the chief attorney need not except to any order of the court so finding.

§ 14.340 *Taxation of funds in hands of fiduciary.* Payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt from taxation. Property purchased wholly or in part out of such payments is not exempt from taxation. The fiduciary should invoke this defense against any tax assessment upon money received from the Veterans' Administration. If the amount in issue is inconsequential, litigation ordinarily would not be justified because of the expense involved.

§ 14.343 *Accounts of managers of Veterans' Administration hospitals or centers.* The manager of a Veterans' Administration hospital or center shall, in the case of each patient or member for whom payments have been received from a guardian, account for the receipts and disbursements of such funds for such person, when such accounts are required by the chief attorney having supervision of the fiduciary.

§ 14.344 *Chief attorney to request account from manager.* In such cases the chief attorney will notify the manager when the account is required—i. e., either annually or at such time as the information is necessary for purposes of checking guardian's account. VA Form 2–4706b, Hospital Account Form, may be used for this purpose and will show all receipts and disbursements. The vouchers and receipts will not accompany the accounting but may be inspected by the chief attorney or a representative of his office, if necessary.

§ 14.347 *Chief attorney to check accounts.* The manager of a Veterans' Administration hospital or center before returning to a guardian any excess funds, either while the veteran remains therein or when he is discharged therefrom, will obtain from the principal chief attorney information as to whether such funds may be released to the guardian. The principal chief attorney's advice will be predicated upon the present status of the guardianship. If payments have been suspended to the guardian, or if the guardian is not satisfactorily accounting for the funds already received or bond is insufficient, the unexpended balance will be withheld until the irregularities have been adjusted. The chief attorney will then furnish the manager with information that the funds may be released to the guardian and will forward an executed VA Form 2–4704, Certificate of Legality of Appointment and Adequacy of Bond.

§ 14.348 *Chief officer of hospital to check with chief attorney before returning funds to guardian.* With respect to funds paid by the Veterans' Administration under institutional awards or as pensions to the chief officers of institutions not under the control and jurisdiction of the Veterans' Administration, the chief officers thereof will secure information from the chief attorney similarly as required by § 14.347, prior to returning such funds to guardians.

(a) When United States Government institutions, other than those under the jurisdiction of the Veterans' Administration, have on hand excess funds to be disposed of in accordance with this paragraph by returning same to a guardian, such institutions will be furnished a photostat of the papers of the appointment of the guardian if same are on file in the Veterans' Administration. Under the ruling of the Comptroller General of the United States, dated September 17, 1929 (A–28639), the photostats will be sufficient to justify payment thereof by the chief officer to the legal guardian. If such institutions have funds of a deceased patient, they will likewise be furnished a photostat of the papers of the appointment of an administrator or other legal representative if the originals are on file in the Veterans' Administration.

§ 14.352 *Accounts of chief officers of private or State hospitals.* The chief officer of an institution other than a Government institution shall render an account annually to the Veterans Administration for funds received from the Veterans' Administration on account of an incompetent beneficiary. The chief attorney will request an accounting annually of such institutions for such funds only, and may effect arrangements for the assignment of Veterans' Administration personnel to assist in the rendition of such accountings.

REMOVAL OF LEGAL CUSTODIANS

§ 14.355 *Grounds for removal.* A legal custodian will be removed when the chief attorney having supervision of such custodian has evidence disclosing that the conditions upon which the legal custodian is recognized no longer exist, or that

the legal custodian is not properly performing the duties of his trust. Thereupon arrangements will be made for recognizing a proper fiduciary.

REMOVAL AND DISCHARGE OF GUARDIANS

§ 14.363 *Grounds for removal.* In cases falling under section 21 (2), World War Veterans' Act, as amended, the chief attorney is authorized to make such arrangements as will best conserve the interests of the ward, and which meet with the approval of the court, as stated in § 14.330, and to have payments suspended pending adjustment.

(a) *Authority of chief attorney to suspend payments.* The chief attorney is empowered to authorize suspension in such cases, pending adjustment. The notice to suspend payments will be forwarded by him to the proper adjudication agency of the office making such payments, or to the proper service in the branch or central office. The chief attorney should submit separate requests for suspension of compensation or pension and for suspension of insurance.

(b) *Chief attorney to supply evidence of appointment to adjudicative services.* Pending decentralization of insurance payments in cases in which payments of compensation or pension are to be or are being made by a regional office and insurance payments are to be or are being made by a branch office or central office, and a guardian has been appointed, or action has been taken to remove a guardian and for the appointment of a successor, the evidence thereof should be immediately forwarded with VA Form 2–4704 to the regional office and at the same time a separate VA Form 2-4704 should be forwarded to the office paying the insurance, with a statement advising that the evidence of the appointment of the guardian or of the discharge of the former guardian and of the appointment of the successor guardian has been forwarded to the adjudication officer of the regional office. The purpose of this instruction is to obviate the necessity for duplicate copies of the aforementioned evidence and to permit payment of the different benefits by the offices or services concerned as soon as practicable. In cases in which evidence has been presented to the regional office of restoration of the veteran to competency and termination of the guardianship, information to that effect should be furnished at the same time to the insurance service in cases in which insurance is also being paid.

§ 14.365 *Authority of chief attorney to appear in State courts for the Administrator.* The chief attorney is authorized to appear in State courts as attorney for the Administrator of Veterans' Affairs in any case comprehended by section 21 of the World War Veterans' Act, as amended (38 U. S. C. 450), and in compliance with the provisions thereof.

§ 14.366 *Discharge of guardian upon restoration of sanity.* After the beneficiary has recovered and is rated competent, the discharge of a guardian and the restoration of full civil rights is dependent upon State statutes. Generally, no steps should be taken to have a guardian discharged until the beneficiary has demonstrated to the satisfaction of the Veterans' Administration that he has adjusted socially and industrially. When it is determined that the guardian should be discharged, he will be notified to that effect. If the guardian in due course takes no action to terminate the guardianship the chief attorney will consult with the veteran and, upon his request, may render legal services as provided in § 14.251 (b).

§ 14.367 *Discharge of guardian upon termination of minority.* When a minor beneficiary becomes of age, the guardian should be discharged. He will be notified to that effect. If in due course of time the guardian does not secure his discharge, the beneficiary will be notified and may take such action as is proper under State law. The guardian will, in any event, file a final accounting with the Veterans' Administration. The discharge of a guardian obtained by a general release from his ward does not relieve him from the responsibility of filing a final accounting with the Veterans' Administration.

§ 14.368 *Use of services of American Red Cross, ex-service organizations, and other cooperating welfare agencies involving mentally incompetent beneficiaries of the Veterans' Administration.* The governing instructions concerning incompetent beneficiaries under guardianship and providing for treatment in hospitals, as well as their commitment thereto, contemplate the use of every facility of the Veterans' Administration to provide properly for the welfare of such beneficiaries and the protection of all concerned, with whom they come in contact. The extent to which the services of the representatives of the various welfare agencies, cooperating with the Veterans' Administration in this work, are applied is not enumerated in detail herein; but it is desired that the fullest cooperation be extended to these representatives and whenever there is any suspicion that the particular beneficiary in whose behalf these services are being utilized is, by reason of his mental infirmity, potentially or actually dangerous, every precaution under local conditions should be taken to assure adequate protection to all concerned. It is believed that greater cooperation between the responsible officers of the regional offices and the representatives of various welfare agencies will result in maintaining proper supervision over this type of beneficiary and will result in the furnishing of information which will enable such representatives to be apprised of potentially or actually dangerous beneficiaries. When there is any suspicion on the part of the representatives of any welfare agency as to an alleged dangerous beneficiary, and information to this effect is communicated to the chief attorney of the nearest regional office, the chief attorney, in addition to furnishing all proper available information, will proceed under instructions governing the operation of his office to determine whether there is need for, or possibility of, securing commitment of such beneficiary to a Veterans' Administration hospital, or that appropriate action is taken by the responsible relatives, legal representatives, interested parties, or civil authorities.

In addition, the chief attorney should cooperate closely with and advise the guardian of the person of such a beneficiary as to the necessity for maintaining closer supervision over his ward not only for the protection of the community at large but for the protection of the ward and to avoid possible civil or criminal liability for the result of his actions.

§ 14.369 *Authority of the chief attorney to order advertising or publication of notices in guardianship or commitment proceedings.* Whenever in applying the provisions of §§ 14.223 to 14.238, inclusive, or in any action necessary to cite a fiduciary to account, or in filing exceptions to an accounting, or in any proceeding incident to removal of a fiduciary instituted by the chief attorney, or any other guardianship proceeding, it is necessary to publish any notice or other advertising in any newspaper or other publication in complying with the provisions of the State laws or local procedure, authority to order such advertising or notice is hereby delegated to the chief attorney as the representative of the Administrator pursuant to section 7, Public No. 2, 73d Congress (38 U. S. C. 707).

SUBPART D—LEGAL SERVICES

AUTHORITY: §§ 14.500 to 14.621 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 991, 1016, sec. 7, 48 Stat. 9, sec. 1, 49 Stat. 607; 38 U. S. C. 2, 11, 11a, 426, 707, Sup. 450. Statutes giving special authority are cited in parentheses at the end of affected sections.

§ 14.500 *Request for opinions.* Requests for opinions construing Federal statutes and regulations will be made only by the Administrator, an assistant administrator, or the person acting for him. (See § 14.504.) Request for an opinion on domestic relations questions will, in the field, be addressed by the adjudication officer; chief, vocational rehabilitation and education division; the director of claims service; or the director, vocational rehabilitation and education service; to the appropriate chief attorney, branch office. (See § 14.502.) In central office such submission will be made by the director, veterans claims service or director, dependents and beneficiaries claims service, to the solicitor.

§ 14.501 *Submissions.* All submissions will set forth the question upon which an opinion is desired together with a detailed and accurate statement of facts. Except as to cases involving domestic relations matters and submissions forwarded by the Administrator or the executive assistant administrator, files, correspondence and other papers will not be transmitted. The assistant administrator or other comparable official will be held responsible for the accuracy and completeness of the submission.

§ 14.502 *Domestic relations questions.* The chief attorney, branch office, may render an opinion on the following domestic relations questions:

(a) Where the issue is whether there has been a valid marriage under the common law and the evidence shows

there was no impediment as to either party.

(b) Where the issue is whether there has been a valid marriage and there was an impediment as to only one of the parties with continued cohabitation after the removal of the impediment.

(c) Legitimacy of children when the issue is determinable under similar conditions.

(d) The claimant, any interested party, or the office submitting the question, shall have the right to request review by the solicitor of any legal opinion of a chief attorney, branch office, on any of the foregoing matters.

In all other domestic relations submissions the chief attorney, branch office, will, after a determination has been made that the facts have been fully developed, forward the submission and the file to central office for an opinion. Any case wherein the rights of contesting claimants require a legal opinion the question will be referred to the central office.

The chief attorney, branch office, will forward copies of all opinions rendered on domestic relations questions to the central office where they will be routed to the solicitor.

§ 14.503 *Precedents.* (a) Except as provided in §§ 14.502 and 14.621, all precedent opinions will emanate from the office of the solicitor. All opinions which formulate Veterans' Administration policy dependent upon construction of Federal statutes and regulations require adoption by the Administrator before they are released or administrative action taken thereon. The foregoing does not apply to opinions of the solicitor concerning application of the statutes or regulations to specific factual situations. Such opinions, while not precedents in the sense of requiring adoption by the Administrator, are binding on all employees concerned.

(b) Administrator's decisions, which are conclusive as to all persons, are available to the public in printed volumes purchasable from the Government Printing Office. These volumes may be inspected at any Veterans' Administration office. Recent Administrator's decisions which have not been published in bound volumes are also available in such offices.

(c) Opinions of the solicitor in individual claims (compensation, pension, insurance loans, vocational rehabilitation, readjustment allowance, etc.) are available in the individual claims folders to those entitled to inspect such folders. (See § 2.525 of this chapter.) Opinions of the solicitor of a general nature (administration, fiscal, personnel, contracts, etc.) which are digested and indexed are available in the office of the solicitor and are distributed to all chief attorneys. Opinions of the solicitor are not available for general distribution but in specific instances when, in the opinion of the solicitor, the public interest justifies or requires, copies may be supplied persons or agencies interested in the general subject covered by the opinion requested.

§ 14.504 *Submissions from the field.* Requests from deputy administrators for legal opinions will be addressed to the central office. Upon receipt in the central office, such requests will be routed to the assistant administrator in charge of the activity in centrol office having jurisdiction of the subject matter. If in order, a submission will be made by such official to the solicitor and the opinion will be forwarded to said official for his information and transmittal to the field. Chief attorneys, branch offices, may request technical assistance on any matter within their jurisdiction.

§ 14.505 *Legal advice or assistance.* The deputy administrators or directors of services, and managers or chiefs of divisions may request legal advice or assistance from the chief attorney, branch office, or the chief attorney, regional office or center, respectively. Managers of hospitals and homes may request legal advice or assistance from the chief attorney, regional office, within whose area the institution is situated. Such advice or assistance may be given within the limitations prescribed herein, that is, the chief attorney, branch office, or the chief attorney, regional office or center, will confine his advice to established precedents and procedure. In central office any official authorized by the head of the activity may consult informally with the solicitor or attorneys in the solicitor's office on any matter as to which he may require legal advice or guidance.

LITIGATION

§ 14.514 *Suits against United States or Veterans' Administration officials.* (a) When a suit is filed against the United States, or the Administrator involving any activities of the Veterans' Administration, except as provided in paragraph (b) of this section, or a suit is filed against any employee of the Veterans' Administration in which is involved any official action of the employee, a copy of the petition will be forwarded to the solicitor, Veterans' Administration, who will take necessary action to cooperate with the Department of Justice in connection with such litigation.

(b) In litigation involving loan guaranty activities the regional or branch chief attorney is authorized to enter the appearance of the Administrator of Veterans' Affairs to "actions for debt and foreclosure" or actions similar in substance (including "title actions"), this includes claims for debt, secured and unsecured, in bankruptcy, receivership, or probate proceedings. The entry of appearance will be by the regional chief attorney, without prior reference to the solicitor or the branch chief attorney, normally within the time that an appearance would be required if there were proper service of process. In all other types of cases the regional chief attorney will not enter an appearance or file any pleading on behalf of the Administrator except in imperative emergency and, then, preserving all rights possible, until authorization is received from the branch chief attorney or the solicitor after submission of all relevant facts. Generally, in the excepted cases, the branch chief attorney may authorize the regional chief attorney to enter an appearance except that the branch chief attorney will not authorize an appearance in any case in which the relief sought apparently would result in the Administrator being subjected to personal liability or to injunction, mandatory or otherwise, or to mandamus or other writ or order that would, or might interfere with his exercise of the functions and the discretion required by Federal legislation or executive order. In such excepted cases, or in any doubtful cases, the branch chief attorney, or if urgency requires, the regional chief attorney, will request instructions from the solicitor submitting copy of so much of the pleadings or other papers together with a sufficient recital of the facts as will make clear the background, the issues, and the relief sought. The submission also will include names and addresses of adverse parties and attorneys so that immediate action may be taken if injunctive relief seems proper. Where necessary in any case to preserve rights which might be lost by default if there had been proper service of process, appropriate action will be taken by a special appearance, or, in jurisdictions where a special appearance does not serve the purpose, or under state statute or decisions will constitute a general appearance for a later date, by an appearance through amicus curiae to obtain an extension of time, preferably thirty days or more, in which to appear and plead without prejudice. If not feasible to obtain an extension, the chief attorney will explain to adverse counsel by letter—and personally, if desirable—the necessity of deferring all action, and will see that the proper judge receives a signed copy of the letter before default day. The letter will point out that there is no valid service of process on the Administrator of Veterans' Affairs but will not base the delay on that alone.

(c) Except in an emergency, no attorney for the Veterans' Administration will initiate appellate court action without prior approval of the solicitor or the branch chief attorney. (If the branch chief attorney conducts the litigation, authorization to seek appellate review will be secured from the solicitor.) This limitation does not preclude filing a motion for new trial, giving notice of appeal, reserving bills of exception, or other preliminary action to protect the right to obtain review, or taking proper action as appellee (respondent), without prior reference to the branch chief attorney or the solicitor, except when time limit prevents, the regional chief attorney will make his recommendations to the branch chief attorney (in duplicate), as to seeking appellate review of any adverse judgment or other action. If time limit requires, the original recommendation may be made directly to the solicitor and a carbon copy forwarded to the branch chief attorney. Except for action required in an emergency (e. g., time limit, etc.), the branch chief attorney will not act on cases referred directly to the solicitor until receipt of information from the solicitor.

(d) The recommendation for review will be limited to cases that ought to be won, except in a few instances in which it may be important to obtain an early authoritative settlement of a law question even if adverse to Veterans' Admin-

istration views. The letter recommending appellate review will include: a summary of law points to be reviewed; citation of applicable statutes and cases, including the pertinent local cases; special reasons for recommending appellate action; statement as to the requirements for printing the record and briefs; any applicable time limitation for action; estimated expense incident to the appeal. The letter will also state whether the loan guaranty official desires or does not desire appellate review or does not desire to make any recommendation in respect thereto. Except where the branch chief attorney conducts the litigation he is authorized to disapprove, without prior reference to the solicitor, any recommendation for appellate review. In any such case he is also authorized to approve recommendation and authorize review if the estimate of costs, including printing, does not exceed $300, irrespective of result. If he approves a recommendation to seek appellate review he may also approve proper expenditures for costs incident thereto, including printing. If the regional and branch chief attorneys recommend appellate review where estimated costs, including printing, will exceed $300, prior approval of the solicitor is necessary.

§ 14.543 *Cases affecting Veterans' Administration generally.* Chief attorneys will establish and maintain such close liaison with the State and Federal courts as to insure that notice will be afforded the Veterans' Administration on all cases affecting the Veterans' Administration. Such information will be forwarded to the solicitor promptly in every case.

§ 14.545 *Habeas corpus writs.* Any manager, or other employee at a field station of the Veterans' Administration who is served with writ of habeas corpus concerning any beneficiary of the Veterans' Administration in his custody or with any other legal process involving his official actions, in addition to taking such steps as, in his judgment, are necessary to protect himself, will immediately notify the chief attorney of the region in which he is situated, who shall promptly forward to the solicitor through the branch chief attorney, full and complete information with respect to the suit, supplementing the same with further information as to the litigation progress.

PROSECUTION

§ 14.560 *Procedure where violation of penal statutes is involved.* (a) The actual submission to the appropriate United States Attorney of a violation or suspected violation of the penal provisions of the statutes of the United States will be made by the chief attorney, regional office or center, within whose jurisdiction the offense is believed to have been committed. Where the file or record which contains evidence of a penal offense is located in central office the matter will be referred to the solicitor for development and reference to the proper chief attorney. Where the file or record is maintained in a branch office same will be referred to the chief attorney, branch office, for development and determination as to whether prosecution is indicated and reference to the proper chief attorney of the regional office or center. The files or records in a regional office or in any other office of the Veterans' Administration will be referred to the chief attorney of the regional office or center having jurisdiction over such office, for development, determination and submission to the United States Attorney if in order.

(b) In all instances where there is evidence or indication of a violation of the penal provisions of the statutes the case will be fully and carefully developed, supplemental investigations being made if necessary. If a prima facie case is disclosed the matter must be submitted to the appropriate United States Attorney. The Department of Justice is charged with the duty and responsibility of interpreting and enforcing criminal statutes and the final determination as to whether the evidence is sufficient to warrant prosecution in any case is a matter for that department. The function of any administrative official is to marshal all available evidence and when the evidence is sufficient to make a prima facie case of a violation of the statutes to transmit the same to the United States Attorney for such action as the Department of Justice, acting through the United States Attorney, may deem necessary. If the United States Attorney decides to prosecute, the chief attorney will cooperate with him.

§ 14.561 *Administrative action prior to submission.* Before a submission is made to the United States attorney the solicitor, where the file is in central office, the chief attorney, branch office, where the file is in a branch office, and the chief attorney, regional office or center, where the file is in the regional office, will see that necessary administrative or adjudicatory (forfeiture, etc.) action has been taken. In cases involving prosecution under titles III (38 U. S. C. 693) and V (38 U. S. C. 694) Servicemen's Readjustment Act, and in urgent cases such as breaches of the peace, disorderly conduct, trespass, robbery, or where the evidence may be lost by delay or prosecution barred by the statute of limitations, submission to the United States attorney may be made immediately.

§ 14.563 *Collections or adjustments.* When it is determined that a submission is to be made to the United States attorney, no collection or adjustment will be made without his advice. However, if, pending the submission, or even subsequent thereto pursuant to a prior demand the potential defendant or other person should forward or tender payment same may be accepted. If the United States attorney determines that prosecution is not indicated or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken at which time necessary adjustments will be made.

§ 14.583 *Crimes or offenses on reservations.* There appears to be no specific statute providing punishment in a case where a patient of a Veterans' Administration hospital or home refuses to leave upon direction of the manager. Such refusal on the part of the patient would ordinarily, under the common law or the local police regulations or State statutes, be considered a trespass, breach of peace, or disorderly conduct, and being so would constitute an offense against the United States by reason of the terms of section 468, title 18, United States Code. Procedure for causing the arrest of the offending patient may be under the provisions of section 208 of the World War Veterans' Act, 1924, as amended, provided the Administrator has designated a person or persons at a particular hospital or home to make arrests. Procedure for causing the arrest of the offending patient may also be under the provisions of section 591, title 18, United States Code.

§ 14.584 *Arrests.* Where such a situation arises at a hospital or home located without the jurisdiction of the District of Columbia, the manager, prior to causing the arrest of the patient who refuses to leave after having been duly discharged will first inquire of any of the officers mentioned in section 591, title 18, United States Code, as to the usual mode of process against offenders in the local jurisdiction wherein the station is situated who are guilty of disorderly conduct, and then proceed accordingly. Every effort should be made to have the patient leave on his own initiative before resorting to this final and drastic measure of causing his removal by arrest. (Sec. 10, 43 Stat. 1308; 38 U. S. C. 497)

TORTS

§ 14.600 *Liability.* (a) The United States is not liable for wrongs inflicted by its officers or employees, occurring while engaged in official duties, except in accordance with specific legislation imposing such liability. The act of August 2, 1946 (Federal Tort Claims Act, title IV, Pub. Law 601, ch. 753, 2d sess. 79th Cong.) 60 Stat. 812; U. S. C. title 28, sections 921–946, prescribes a uniform procedure for handling of claims against the United States, for money only, accruing on and after January 1, 1945, on account of damages to, or loss of, property or on account of injury or death caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of his employment. Part 2 of the act relates to the administrative determination and settlement of such claims" * * * where the total amount of the claim does not exceed $1000 * * *". Parts 3 and 4 provide for the presentation of a claim for a sum not exceeding $1000 to the Federal agency out of whose activity it arises or the filing of a suit against the United States for any amount in a Federal Court. The claim or suit must be filed within one year from the date the claim accrues or within one year of the passage of the act. Part 4 further provides that as to a claim not exceeding $1000 presented to a Federal agency suit may be brought after final administrative disposition of the claim and that the time to institute suit shall be extended for a period of six months from the date of mailing of notice to the claimant by such Federal agency advising of the disposition of the claim or from the date of its withdrawal, if the time for filing suit would otherwise expire before the end of such period.

(b) In part 4 of the act there is specifically enumerated the types of claims for which the Government is not liable under this law.

§ 14.602 *Collisions.* (a) A report of any collision involving a Veterans' Administration vehicle which results in damage to private property or injury or death to a person, will be made immediately by the driver of the Veterans' Administration vehicle on Standard Form 26, Driver's Report—Accident, Motor Transportation. This form, together with Standard Form 27, Investigating Officer's Report—Accident, Motor Transportation, will be forwarded to the chief attorney of the appropriate branch office by the chief attorney, regional office, as soon as a complete investigation of the accident has been made.

(b) All drivers of Government motor vehicles and employees concerned with investigation and report of accidents and claims will be furnished with Standard Forms 26 and 27 and will comply strictly with instructions contained therein.

§ 14.603 *Damage or loss due to other causes.* Any occurrence resulting in damage to, or loss of, property or in personal injury or death due apparently or allegedly to the negligence or wrongful act or omission of an employee of the Government acting within the scope of his office or employment, coming to the attention of the deputy administrator or the manager of any station, will be referred promptly to the appropriate chief attorney for complete investigation and report.

§ 14.604 *Investigation.* An employee will be designated at each activity to investigate occurrences involving damage to or loss of privately-owned property or injury or death apparently or allegedly resulting from the negligence of an employee of the Veterans' Administration. At a branch office or regional office this employee will be designated by the chief attorney. At all other stations the employee to make such investigations will be designated by the manager. Where possible, the employee designated as the investigating officer will be one who has had some experience in the investigation of accident or casualty cases. In cases involving substantial damage or serious personal injury and in cases wherein a claim in an amount less than $1,000 is submitted, the complete file, including the investigation report and summaries and citations of applicable local laws, regulations and decisions, will be forwarded to the chief attorney, branch office, by the chief attorney, regional office. If the claim presented is in excess of $1,000 the chief attorney, regional office, will notify the claimant that the Veterans' Administration is without jurisdiction to consider the claim since, under the Federal Tort Claims Act (title IV, Pub. Law 601), 79th Cong.; U. S. C., title 28, secs. 921–946) jurisdiction is limited to claims "where the total amount of the claim does not exceed $1,000."

§ 14.605 *Report.* The chief attorney, branch office, will review all the evidence and prepare a concise, complete report, including a summary of the evidence, his findings of the essential ultimate facts, citations of applicable local laws, regulations and decisions, and his conclusion of law as to the liability or nonliability of the United States.

§ 14.606 *Determination of Liability.* (a) When the chief attorney, branch office, determines that there is no liability on the part of the United States, he will promptly notify the claimant of the disallowance of the claim, explaining the reasons therefor, and advise the claimant of the right to appeal to the solicitor within sixty days and of the right afforded by the act to file suit. In the event appeal is not made to the solicitor within sixty days, the date of expiration of said period will be considered as the date of final administrative disposition of the claim for the purpose of the statute of limitations provided in section 420 of the act.

(b) In cases wherein the chief attorney, branch office, determines liability on the part of the United States under the act, and cases of appeal from an adverse decision by the chief attorney, branch office, the report required by § 14.605, will be transmitted, along with a statement regarding a fair and reasonable amount for reimbursement, to central office, attention, the solicitor. The solicitor will review said report and make the final administrative determination regarding allowance of the claim. If the claim is disallowed, the solicitor will notify the claimant accordingly and advise of the right afforded by the act to file suit.

(c) If suit is instituted, the investigation report and all other evidence in the case will be made available to the Department of Justice, and the local chief attorney will cooperate as may be requested by the United States attorney.

(d) In any cases administratively settled, the solicitor will approve the attorney fee, if any, to be paid out of the award. Any member of the bar in good standing and who represents the claimant shall be recognized in presenting claims under the Federal Tort Claims Act.

§ 14.608 *Damage to or loss of Government property.* Where damage to or loss of Government property under the jurisdiction of the Veterans' Administration results from the negligence of a person other than an employee of the United States acting within the scope of his employment, investigation will be made as provided in § 14.602 if the loss or damage results from collision or as provided in § 14.603 if the loss or damage is due to other causes. The chief attorney, branch office, or chief attorney, regional office, if so directed, will request payment of the amount of damage from the person liable therefor. If the chief attorney is unable to secure voluntary payment of the claim a report similar to that provided in § 14.605, together with a statement as to why payment is denied will be transmitted to central office, attention the solicitor.

§ 14.609 *Damage to or loss of patients' property.* The authorization for payment of damage to or loss of personal property of hospitalized patients caused by the negligence of an officer or employee of the Government contained in the act of December 28, 1922 (42 Stat. 1066; 31 U. S. C. sec. 215), is repealed by the act of August 8, 1946, *supra*, and claims for such losses are for settlement under the Tort Claims Act. The procedure for the development of such claims will be that set forth in Veterans' Administration medical procedures.

§ 14.610 *Damage or loss caused by fire.* Section 31, World War Veterans' Act, 1924, as amended (44 Stat. 792; 38 U. S. C. 458), providing for the reimbursement of beneficiaries hospitalized or who have been hospitalized in Veterans' Administration hospitals for any loss of personal effects sustained by fire while such effects are or were stored in designated locations in Veterans' Administration hospitals, is not repealed. The procedure for handling this class of claims is governed by the provisions of §§ 17.75, 17.76 and 17.77 of this chapter.

LOAN ACTIVITIES

Power of Attorney and Delegation of Authority Under Title III, Public Law 346, 78th Congress, as Amended, to Loan Guaranty Officers

§ 14.620 *Power of attorney and delegation of authority*—(a) *Forms, Power of Attorney, Title III, Public Law 346, 78th Congress, as amended.* VA Form 2–23, Power of Attorney and Delegation of Authority, and VA Form 2–24, Revocation of Power of Attorney, are prescribed for use of loan guaranty officials to supply formal evidence of the authority of designated persons to perform the functions and exercise the powers delegated to them by § 36.4342 of this chapter pursuant to section 504, Servicemen's Readjustment Act of 1944, as amended (38 U. S. C. 694d).

(b) *Execution of power of attorney and delegation of authority.* The Deputy Administrator will designate two appropriate employees in each regional office to be named in appropriate instruments commonly referred to as "Power of Attorney," VA Form 2–23. The loan guaranty officer, if any, will be one designee. Four copies of VA Form 2–23 will be filled in by the regional chief attorney for each designee. One copy will be retained and three forwarded to the branch chief attorney for forwarding, if approved, to the Solicitor, who will secure execution and acknowledgment of two copies by the Administrator. One copy will be retained in central office file. The two executed copies will be returned direct to the regional chief attorney.

(c) *Revocation of power of attorney.* Any such power of attorney will be revoked promptly when, in the discretion of the Deputy Administrator, cause therefor arises; and in any event upon the designee's separation from the position of a loan guaranty officer, or from the service, and all executed copies of VA Form 2–23 designating such person will be canceled and forwarded to the Office of the Solicitor. The regional chief attorney upon notification will prepare VA Form 2–24 accordingly, and secure execution and acknowledgment thereof in like manner. It will be recorded in each county, if any, in which the power of attorney was recorded.

(d) *Recordation.* VA Form 2–23 or VA Form 2–24 may be filed for record when in the judgment of the chief attorney it is appropriate to do so. If not so filed in the appropriate county, any interested person may be supplied a copy duly certified by the Veterans' Administration, or a photostat, for use in connection with loan guaranty matters, and may have the original recorded by the chief attorney upon payment of the recording fee therefor, or by including the amount thereof in the purchase price of the property, as may be agreed.

(e) *Recordation fee.* Authority is hereby granted for payment of recordation fee if recordation is requested by loan guaranty officer or approved by the chief attorney. Payment contemporaneously with filing for record may be accomplished by advance of cash in accord with Veterans' Administration finance procedures. (Sec. 8, 59 Stat. 626; 38 U. S. C. 694)

§ 14.621 *Authority of solicitor and chief attorneys.* The solicitor and each chief attorney is the attorney of the Administrator of Veterans' Affairs for all purposes of section 509, title III, Servicemen's Readjustment Act, as amended (38 U. S. C. 694j), and as such is authorized to represent the Administrator in any court action, or other legal matter, under said title, subject to statutes and executive orders concerning claims of the United States. Each chief attorney is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans, or for examination and other proper services with respect to titles to and liens on real and personal property, when such employment is deemed by him to be appropriate. (Sec. 8, 59 Stat. 626; 38 U. S. C. 694)

SUBPART E—RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS, RULES OF PRACTICE AND INFORMATION CONCERNING FEES, PUBLIC NO. 844, 74TH CONGRESS

AUTHORITY: §§ 14.626 to 14.663 issued under sec. 5, 43 Stat. 608, secs. 1, 2, 46 Stat. 991, 1016, sec. 7, 48 Stat. 9, secs. 201–203, 49 Stat. 2032; 38 U. S. C. 2, 11, 11a, 426, 706, 707, Sup. 102–104.

§ 14.626 *Requirements for recognition of organizations.* The American Red Cross, American Legion, Disabled American Veterans, Grand Army of the Republic, United Spanish War Veterans, Veterans of Foreign Wars, and such other organizations as the Administrator of Veterans' Affairs shall approve, may be recognized in the presentation of claims under the laws administered by the Veterans' Administration when the proper officers thereof make application for recognition on the form prescribed and furnished by the Veterans' Administration, and as a part of such application, agree and certify that neither the organization nor its representatives will charge claimants any fee or compensation whatsoever for their services. In general, no additional organizations will be recognized after January 1, 1947, except (1) State or Governmental services, or (2) organizations granted a charter or recognition by act of Congress.

(a) In requesting recognition, the following information will be supplied:

(1) Statement outlining the purpose of the organization and need thereof, and the manner in which the veteran or his dependent would be benefited by such recognition;

(2) Names, titles, and addresses of officers;

(3) Number of posts or chapters and States in which located and total paid-up membership;

(4) Names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives;

(5) Copy of last financial statement of the organization;

(6) Copy of the constitution or charter and by-laws of the organization.

§ 14.627 *Requirements for recognition of accredited representatives.* Recognized organizations shall file with the Administration on the prescribed form furnished by the Veterans' Administration the names of any officers whom they desire recognized as accredited representatives thereof and the Veterans' Administration office or offices at which recognition is to the extended in the presentation of claims. In proposing a candidate for recognition as a representative, the organization, through its appropriate officer, shall certify to the following: (1) That the applicant is a citizen of the United States, of good character and reputation; is qualified by training or experience to assist in the presentation of claims; and that he is a member or employee of the organization; (2) that he is not employed in any civil or military department or agency of the United States; (3) whether the applicant is a veteran, and if so, that he was honorably discharged from the active service.

(a) The application (Form P–21, Revised) may be filed with the central office or directly with the branch or regional office where the applicant is to serve.

(b) An application received in the central office will be sent to the branch or regional office designated. The deputy administrator or regional manager, as the case may be, will secure sufficient facts, by field investigation, if necessary, to justify a determination whether the applicant is qualified. If the deputy administrator or the manager determines that the applicant is qualified, he will issue a form letter (FL 2–3, Notice to Veteran's Representative of Recognition), sending the original to the applicant, and two copies to central office for notation and forwarding to the organization. If the approval is by the manager of a regional office, an additional copy will be forwarded to the appropriate branch office. In like manner, if approval is by the deputy administrator for the branch office and all regional offices in the branch area, copies will be forwarded to each regional office and two copies to central office. Branch and regional offices will establish intra-office procedures for notification of interested services. A record of accredited representatives will be maintained at each office. If the case is one of doubtful aspect, the entire matter will be referred to the central office, attention of the solicitor, through the appropriate branch office.

(c) Recognition will be canceled at the request of the organization, and the deputy administrator or manager may suspend any recognition for cause, sending a report, through channels, to the central office, attention of the solicitor, for final determination. In cases of extraordinary violation involving criminal action, cancelation may be effected immediately by the field office subject to review by central office. Where recognition is canceled or suspended in accordance with the above, notice thereof (FL 2–5, Cancelation of Recognition as Veteran's Representative, or letter of suspension) will be supplied in the same manner, as above stated, with respect to notice of recognition.

(d) Nominations of accredited representatives of national service organizations and of the American Red Cross will be accepted only if approved by the national certifying officer of such organization.

(e) Letters of general recognition issued by the central office to national and field officers of recognized organizations will constitute authorization for their recognition in claims matters in all branch and regional offices of the Veterans' Administration and letters of recognition issued by a deputy administrator will constitute authorization for the accredited representative to present claims in the branch office only, or in the branch office and all regional offices in that area as required by his service organization.

(f) While accredited representatives are recognized for claims work at branch and regional offices their accreditation imparts the privilege of recognition in Veterans' Administration hospitals and centers in matters connected with such claims work.

§ 14.628 *Powers of attorney.* (a) Before an organization may be recognized in an individual claim, there must be filed a power of attorney duly executed by the claimant specifically conferring upon the organization the authority to represent the claimant in the presentation of his claim and to receive any information in connection therewith on the form prescribed and furnished by the Veterans' Administration which power of attorney shall be presented to the Veterans' Administration office concerned to be filed in the claimant's folder. The power of attorney must be signed by the claimant, or if the claimant be under guardianship, by the guardian. An organization which has filed a power of attorney in the case of a veteran may, in the event of death of the veteran, be recognized for a reasonable period thereafter as to claims in the course of prosecution at the time of such death, unless a new power of attorney is filed.

(b) Upon receipt and approval of the power of attorney, the organization named therein shall be recognized as the sole agency for the presentation of the claim covered thereby, and no other organization, agent or attorney shall be recognized in the presentation of that claim or any phase thereof. The power of attorney given by the claimant may be revoked by him at any time and a subsequent power of attorney substituted, designating another organization, agent or attorney; a subsequently executed power

of attorney shall constitute a revocation of any existing power of attorney. Likewise, a power of attorney may be revoked by the organization named therein.

(c) In certifying a case to the board of veterans appeals wherein a power of attorney has been executed by the claimant in favor of an attorney or representative of a recognized organization, the certifying officer will include a statement showing that such attorney or attorney-in-fact is on the accredited list.

§ 14.629 *Recognition of attorneys and agents.* (a) Claim agents will continue to be recognized and certified only by the office of the solicitor.

(b) Recognition of attorneys is hereby decentralized to the deputy administrators, branch offices, and the managers of regional offices, the functions to be a part of the duties of the chief attorney, branch office, or the chief attorney, regional office, respectively. Any member in good standing of the bar of a State, territory or possession of the United States, or of the bar of the District of Columbia will, upon application on VA Form 2–3186, Application for Recognition as Attorney, be certified as entitled to recognition provided he has never been convicted (including plea of guilty or nolo contendere) of a serious penal offense, including any violation of any penal provisions respecting fees.

(c) In general the procedures of paragraphs (a), (b) and (c) of § 14.628 will apply, insofar as pertinent, to recognition of attorneys.

(d) Any cause considered sufficient to reject the application of an attorney or to cancel recognition previously granted, will be reported in full, through channels, to the central office, attention the solicitor, for final determination; except that recognition shall be automatically canceled if an attorney is convicted of charging illegal fees contrary to the provisions of the Federal Statutes (secs. 101–103, sec. 551, T. 38 U. S. C., or similar provision). There shall also be applied the provisions of sec. 6 (a), Public Law 404, 79th Congress. (See also §§ 14.630–14.635.)

§ 14.630 *Attorneys affiliated with organizations.* The policy of the Veterans' Administration precludes the recognition as an attorney or agent, any person who is an officer or employee, appointive or elective, of any veteran, welfare, or State, county, or municipal organization engaged in assisting claimants in presenting claims before the Veterans' Administration without fee or emolument, except that any person holding such office whose duties do not include actual assistance in the presentation of claims before the Veterans' Administration may be recognized but will be precluded while holding such office from receiving a fee for services rendered as an attorney or agent in the presentation and prosecution of claims for benefits administered by the Veterans' Administration. Furthermore, it is contrary to the policy to permit an attorney or agent to transact claims business from or at an office from or at which a veteran or welfare organization, or an agency of a State or other political subdivision, carries on its work incident to assisting claimants in presenting claims before the Veterans' Administration or to use the stationery of such organization or agency in transacting his claims business.

§ 14.631 *Knowledge of laws.* An applicant for recognition as attorney will be presumed to have such knowledge of the law and regulations as to qualify him to render substantial service and may be recognized by the chief attorney of a branch or regional office if his application shows he meets the requirements of § 14.632. Any duly recognized attorney will, for the purpose of receiving appropriate information in a specific case, be accorded such recognition by central office or any branch or regional office to which he presents a duly certified or attested copy of his notification of recognition as attorney, together with the original or similarly exemplified copy of power of attorney.

§ 14.632 *Character and citizenship.* Any person of good moral character and of good repute who is an attorney at law in good standing and a citizen of the United States, or who has declared his intention to become such a citizen, may be recognized if not prohibited by law, and represent claimants before the Veterans' Administration, by presenting for that privilege, to the manager or to the deputy administrator, a properly executed application on the form prescribed by the Administrator, VA Form 2–3186, Application for Recognition as Attorney. Attorneys who are citizens of the Republic of the Philippines may be recognized under similar criteria in the presentation of claims before the Veterans' Administration office in the Philippines.

§ 14.633 *Agents; requirements for recognition.* Any competent person of good moral character and of good repute who is a citizen of the United States, or who has declared his intention to become such a citizen and who is not engaged in the practice of law, may be recognized as an agent, if not prohibited by law, and represent claimants before the Veterans' Administration by presenting to the Administrator of Veterans' Affairs, Washington, D. C., a properly executed application on the form prescribed by the Administrator, VA Form 3187, Application for Recognition as Agent. Applicants for recognition as agents may be required to prove their fitness to render substantial service by undergoing a written examination testing their knowledge of the laws administered by the Veterans' Administration and regulations promulgated thereunder, as to which separate instructions will be issued.

§ 14.634 *Notification of recognition of attorneys by field stations.* When an attorney has been recognized a 3 x 5 card will be prepared showing his name, address and date of recognition. Copies of this card will be forwarded to (a) office of the solicitor, (b) chief attorneys of branch and regional offices within that area, (c) the director, claims service, of the branch office within that area, (d) the adjudication officers of regional offices within that area, and (e) to any other office in which the attorney requests that his recognition be recorded.

§ 14.635 *Suspension and revocation of recognition.* Whenever the Administrator of Veterans' Affairs has knowledge or information that an attorney or agent recognized by the Veterans' Administration is or has engaged in unlawful, unprofessional or dishonest practice, or is incompetent, or has violated or refused to comply with the laws, regulations and rules governing his recognition before the Veterans' Administration, or who shall in any manner deceive, mislead, or threaten any claimant or prospective claimant by word, circular, letter or advertisement, the Administrator shall give the accused attorney or agent due notice with a statement of the charge or charges against him, which statement shall be sufficiently specific to permit the accused intelligently to make answer thereto, and shall cite said attorney or agent to show cause within 30 days, which time limit may be extended by the Administrator, why his recognition should not be suspended or revoked. Where deemed proper, the recognition of an attorney or agent may be temporarily suspended without notice, pending action as herein provided.

§ 14.636 *Time allowed in answering charges preferred.* If said attorney or agent shall fail to file an answer or other pleading, within the time specified, such charge or charges will be taken as confessed and judgment may be rendered as upon default.

§ 14.637 *Answer to charges.* If an answer, under oath, is filed denying the charges, or so explaining them as to raise an issue thereon, a time and place shall then be set for the taking of testimony. The testimony shall be taken at as convenient a place as possible for both the Government and the defendant and notice shall be served on the defendant informing him of the time and place at which testimony will be taken for the Government, in order that he may be present and cross-examine the witnesses. Testimony shall be reduced to writing and be signed by the witnesses, unless otherwise stipulated, and may be taken before any officer authorized to administer oaths for general purposes or before any officer or agent of the Veterans' Administration designated for that purpose. After the testimony has been taken, it will be considered; and if the charge or charges be sustained the Administrator will suspend or revoke the recognition of such attorney or agent, or take such other action thereon as the facts warrant.

§ 14.638 *Acts subjecting recognized attorneys or agents to suspension or revocation.* The recognition of any attorney or agent will be subject to suspension or revocation, who knowingly commits or is guilty of any of the following acts, to wit: (a) Presents or prosecutes a fraudulent claim against the United States or the Veterans' Administration; (b) demands or accepts any unlawful compensation for preparing, presenting or prosecuting any claim before the Veterans' Administration or for advice or consultation concerning such a

claim; (c) with intent to defraud has in any manner deceived, misled, or threatened any claimant or prospective claimant by word, circular, letter, or advertisement; (d) who, in the presentation or prosecution of, or in connection with, any matter or business pending before said Veterans' Administration, has as his associate, or employs as his agent, subagent or correspondent, any person who has been guilty of any of the above-mentioned acts, or who has been denied recognition, or has had his recognition suspended or revoked by the Veterans' Administration, or who himself acts as the associate, agent, subagent, or correspondent of any such person; or who is otherwise and in any manner whatever guilty of dishonest or unprofessional conduct.

§ 14.639 *Rules of recognition.* No person other than an accredited representative of a recognized organization shall be recognized in the preparation, presentation or prosecution of any claim under statutes administered by the Veterans' Administration, unless he has been recognized as an attorney or agent pursuant to these regulations, except (a) that any person may be recognized for the purpose of a particular claim upon filing with the office where such claim folder is located a proper power of attorney and a statement signed by such person and the claimant that no fee or compensation of whatsoever nature shall be charged or paid for the services rendered, and except (b) in claims for insurance benefits under a contract in which the Government admits liability on the contract, there is no issue or contest as to the designated beneficiary, and it is reasonably apparent that the attorney or agent will not charge a fee. In the first class of cases the attorney should be advised by form letter FL 2–16, Recognition Information to Attorneys and Individuals, regarding the requirements of being recognized in a particular claim or generally. In the latter class of cases a paragraph substantially as follows should be incorporated in the letter acknowledging receipt of the claim:

> The evidence submitted by you in connection with the claim for insurance benefits in the instant case has been received and an adjudication of the claim for benefits will be made as expeditiously as possible. It is understood, of course, that you are not entitled to any fee for services performed by you in connection with the preparation and presentation of this claim, inasmuch as you have not been regularly recognized to present claims before the Veterans' Administration by the Administrator of Veterans' Affairs.

§ 14.640 *Power of attorney.* Only a duly executed power of attorney confers upon an agent or attorney the right to prepare, present and prosecute a claim before the Veterans' Administration. Upon receipt of a duly executed power of attorney, the agent or attorney named therein will be informed of the status of the claim, and will be recognized as the sole agent for the preparation, presentation and prosecution of the claim covered thereby so long as the power of attorney is effective.

§ 14.641 *Formalities of power of attorney.* A power of attorney, in order to be recognized as good and valid must be signed by the claimant or his guardian and be acknowledged before an officer authorized to administer oaths for general purposes or before an employee of the Veterans' Administration to whom authority to administer oaths has been delegated.

§ 14.642 *Diligence or neglect on part of attorney or agent.* An agent or attorney shall be required to exercise due diligence in all claims in which he is recognized. Neglect to prosecute a claim for six months or failure to furnish evidence called for by the Veterans' Administration within ninety days shall be held, in default of cause shown, presumptive evidence of the abandonment of all attorneyship rights in the claim.

§ 14.643 *Notification of rejection of claim; termination of interest of attorney or agent in claim*—(a) *Notification of rejection of claim.* Upon the rejection of a claim the agent or attorney of record and the claimant shall be notified of such rejection and the reason therefor and if within ninety days from the date of such notice no motion for reconsideration or appeal from the ruling made has been filed by the attorney or agent or claimant, the attorney or agent in default of cause shown shall be deemed to no longer represent the claimant and the claimant may employ any other duly qualified agent, attorney or other representative.

(b) *Termination of interest of attorney or agent in claim.* Where a claim is allowed in whole or part and a fee paid to the attorney or agent, his interest in the claim will be deemed to have terminated, unless the circumstances indicate that the claimant desires to have the attorney further represent him.

§ 14.644 *Revocation of power of attorney and discharge of attorney or agent.* The claimant shall have the privilege of exercising his right at any stage of the claim to revoke a power of attorney and discharge his attorney or agent upon a showing of cause deemed good and sufficient by the Administrator.

§ 14.645 *Willful withholding of application for pension.* The willful withholding of an application for pension or evidence by an agent or attorney for any cause shall render the recognition of such agent or attorney liable to suspension or revocation.

§ 14.646 *Change of guardianship during pendency of claim.* A change of guardian in any case during pendency of a claim shall not affect the question of attorneyship and fee, but no fee shall be allowed to a guardian who prosecutes the claim of his ward or to a firm of attorneys of which the guardian is a member.

§ 14.647 *Transfer, assignment, or substitution of attorneyship.* A transfer, assignment, or substitution of attorneyship shall not be recognized and no agent or attorney shall have the right to make an assignment of any claim in which he has been recognized.

§ 14.648 *Requesting aid or assistance through members of Congress, et al., regarding claims.* Every agent or attorney who shall, directly or indirectly, request of any member of either house of Congress, or of any United States Government official or representative (other than one whose duty it is under the law to supervise and administer the laws, rules and regulations and/or instructions governing benefits under statutes administered by the Veterans' Administration), or any organization recognized by the Veterans' Administration, aid or assistance in the prosecution of a claim, or who shall, directly or indirectly request or advise a claimant to seek such aid in the prosecution of a claim, shall be subject to inquiry respecting his competency to fully represent a claimant and shall be considered as having forfeited his right to any fee in such case.

§ 14.649 *Supplying Veterans' Administration forms.* Attorneys and agents shall not be furnished with supplies of Veterans' Administration forms but will be required to have them printed at their own expense and in strict accordance with the official forms prescribed by the Veterans' Administration. An attorney or agent may insert a power of attorney in his form over claimant's signature in words substantially as follows: "I hereby appoint _____ as my attorney to prosecute this claim." The power of attorney in order to be valid must fully comply with § 14.641. Every attorney, agent, or other person recognized as entitled to present claims before the Veterans' Administration shall submit to the Administrator, in duplicate, copies of all proposed forms and letterheads intended for use in connection with business before the Veterans' Administration and the Veterans' Administration will notify such attorney or agent of its approval or disapproval. The use by an attorney or agent of the characters "U. S.," or the words "United States," as a part of his title or the title of his business shall not be permitted. Agents will not designate themselves as attorneys at any time except in a power of attorney. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not of itself improper, but solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional and will render the recognition of an attorney or agent liable to suspension or revocation.

§ 14.650 *Expenses incurred by attorney or agent in the prosecution of claims.* When an agent, attorney, or other person incurs any expense in the prosecution of a claim, he must file a sworn itemized account of such expense with the Veterans' Administration to be retained in the claims file as part of the permanent record and secure the approval thereof before demanding or receiving reimbursement from the claimant by the director of the service handling the claim, or his designate, if the claim is adjudicated in central office, or by the adjudication officer, or his designate, if the claim is adjudicated in the field, provided that in all claims other than those involving compensation and pension the approval shall be made in central office as above indicated. Notice of the action taken in

all cases shall be transmitted to the attorney concerned by the service handling the claim.

§ 14.651 *Solicitation of fees.* Attorneys or agents shall not, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive, any fee or compensation whatsoever for advice or consultation concerning the laws administered by the Veterans' Administration and the regulations, rules based thereon, or for service to claimants thereunder, except such fee or compensation as is herein provided, whether a claim has been or is thereafter filed, or no claim is filed for the person in whose behalf such advice or consultation is given or held or service rendered. Any agent or attorney who shall so do shall thereby subject his recognition by the Veterans' Administration to suspension or revocation, and be subject to the applicable penal provisions of the law.

§ 14.655 *Amount of fees.* Except where prohibited by law and except in those cases where the person has been recognized in a particular claim, or has been recognized in an insurance claim without having been regularly recognized as an agent or attorney by the Administrator of Veterans' Affairs, and except in accrued claims and burial claims, a fee of $10 in an original claim for monetary benefits under the statutes administered by the Veterans' Administration and a fee of $2 in a claim for increase for such benefits, will be payable to the agent or attorney of record in an allowed claim. In the excepted cases referred to above no fee whatsoever may be paid to or charged by an agent or attorney.

§ 14.656 *Fees based on revaluation of claims.* When a claim involving monetary benefits has been allowed and for any reason the monetary benefits so allowed are reduced or held terminated, or the claimant has been cited to show cause why they should not be reduced or terminated, proceedings looking to the continuation of such monetary benefits originally allowed will be considered a claim for monetary benefits and a fee of $10 will be payable in the event the monetary benefits originally allowed are continued, such fee to be deducted from the amount of monetary benefits subsequently payable.

§ 14.657 *Approval of fees by Veterans' Administration.* The fee provided in § 14.655 shall be due and payable only upon the approval of the claim by the Veterans' Administration and then only in the event the attorney or agent has rendered material service in the prosecution of the claim. The filing of the claim may be considered as rendering material service if the attorney or agent is not in neglect but renders all the service necessary to complete the same, that is, where the attorney or agent has done all that he was called upon to do, or could do, even if it be the filing of the application alone, he is entitled to be paid the attorney's fee if one be provided in such case.

§ 14.658 *Method of payment of fees.* At the time of allowance of the claim an award of the attorney's fee, if same is found due, will be made and paid by deduction from the monetary benefit allowed, but only to the attorney or agent of record at the time of allowance. The attorney to be entitled must have been regularly recognized by the Veterans' Administration and in good standing at the time of such award.

§ 14.659 *Appeals from denial of fees.* Consideration as to the entitlement of an attorney or agent to a fee in any claim wherein a fee has been denied will not be entertained unless an appeal from the action taken by the Veterans' Administration denying the fee is filed in the Veterans' Administration within one year from the date of such action.

§ 14.663 *Banks or Trust Companies acting as guardians for veterans.* Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee thereof, including a regularly employed attorney, if such employee or attorney represents the corporation in its fiduciary capacity but no fee may be allowed for such services under § 14.646.

PART 17—MEDICAL

APPOINTMENTS

AUTHORITY: §§ 17.30 to 17.148 issued under secs. 6, 7, 1, 29, 48 Stat. 9, 301, 525, sec. 1, 49 Stat. 729, ch. 109, 53 Stat. 652; 38 U. S. C. 11a (3), 445a, 445b 706, 706a, 707. Statutes giving special authority are cited in parentheses at the end of affected sections.

APPOINTMENTS

§ 17.30 *Refusal of treatment by unnecessarily breaking appointments.* A patient under outpatient medical or dental treatment who breaks an appointment, without a reasonable excuse for such action, will be informed that a repetition of the offense will be deemed to be a refusal of Government treatment. If such patient breaks a second appointment, without at least 24 hours notice, or a reasonable excuse, it will be deemed that he has refused Government treatment. Thereafter no further treatment will be furnished until he has made a specific formal application therefor and has satisfactorily evinced a willingness to accept Government treatment and to cooperate with the Government agency providing the treatment, by keeping his appointments, or by giving at least 24 hours notice where an appointment must necessarily be broken. Where an appointment is broken without notice and satisfactory reasons are shown for the breaking of the appointment, and it is also satisfactorily shown that circumstances attending the breaking of the appointment were such that notice could not be given, the patient will not be deemed to have refused treatment. Nothing in this section will be construed to prevent a patient from receiving the benefit of treatment for an emergency condition that may arise during the time when he has been determined to be "Not entitled to treatment" as a result of refusal. (Sec. 204, 43 Stat. 622; 38 U. S. C. 493)

EMERGENCY HOSPITALIZATION

§ 17.35 *General authority for emergency hospital treatment.* (a) All potential beneficiaries having prima facie entitlement therefor, who are in need of emergency hospital treatment, may be provided therewith, and such emergency hospital treatment may, if necessary, be continued until a definite decision is reached as to the eligibility of the applicant for medical treatment. This authority for emergency hospitalization carries authority to supply Government transportation and necessary meals and lodging en route to the facility designated for the emergency admission.

(b) Emergency hospitalization may also be provided applicants who have not completed a prescribed period of exclusion from hospitalization, imposed because of infraction of facility discipline; but Government transportation (and necessary meals and lodging en route) will not be supplied these applicants, unless they execute affidavit that they are unable to defray the expense of travel to the facility designated.

(c) The provisions of paragraph (b) of this section are also applicable to a member of a State Soldiers Home, on whose behalf the said home is receiving Federal aid payments, who is discharged therefrom for disciplinary reasons.

MEDICAL TREATMENT IN FOREIGN COUNTRIES

§ 17.36 *Eligibility for medical treatment in foreign countries.* No person shall be entitled to receive domiciliary, medical or hospital care, including treatment, who resides outside of the continental limits of the United States or its territories or possessions, except that the chief medical director may authorize hospitalization, including medical treatment, determined necessary for diseases or injuries adjudicated as incurred in or aggravated by active military or naval service in a period of war, for applicants temporarily sojourning or temporarily residing in a foreign country, who are citizens of the United States. (Sec. 4, Pub. No. 866, 76th Cong.) (Sec. 4, 54 Stat. 1195; 38 U. S. C. ch. 12 note)

HOSPITALIZATION AND DOMICILIARY CARE

§ 17.45 *Persons entitled to hospital observation and physical examination.* Hospitalization for observation and physical (including mental) examination may be effected when requested by an authorized official, or when found necessary in physical examination of the following persons:

(a) Claimants or beneficiaries of the Veterans' Administration, for purposes of disability compensation, pension, emergency officers retirement pay, medical feasibility for vocational training under Public Law 16, 78th Congress, and Government insurance.

(b) Claimants or beneficiaries referred from a facility to a diagnostic center for study to determine the clinical identity of an obscure disorder, or for advice as to treatment.

(c) Employees of the Veterans' Administration when necessary to determine their mental or physical fitness to perform official duties.

(d) Claimants or beneficiaries of other Federal agencies: (1) Bureau of War Risk Litigation, Department of Justice—plaintiffs in Government insurance suits; (2) United States Civil Service Commission—annuitants or applicants for retirement annuity, and such examinations of prospective appointees as may be requested; (3) Bureau of Employees Compensation—to determine identity, severity or persistence of disability; (4) Railroad Retirement Board—applicants for annuity under Public No. 162, 75th Congress; (5) other Federal agencies.

(e) Pensioners of nations allied with the United States in World War I and World War II, upon authorization from accredited officials of the respective governments. (Sec. 10, 44 Stat. 797, sec. 6, 46 Stat. 472, sec. 3, 57 Stat. 45, 60 Stat. 526; 5 U. S. C. 710–714, 38 U. S. C. ch. 12 (note), 488 note, 488a, 492)

§ 17.46 *Persons entitled to hospital treatment or domiciliary care.* Hospital treatment or domiciliary care may be provided:

(a) Subject to the eligibility provisions of §§ 17.47 and 17.48, for:

(1) Persons discharged or released from active military or naval service under other than dishonorable conditions.

(2) Persons retired from active military or naval service including members of the Fleet Naval Reserve or Marine Corps Reserve on retainer pay, who had served honorably during a war period (Public No. 198, 76th Cong., as amended by Pub. Law 365, 77th Cong.).

(3) Persons retired from the Army of the United States under Public No. 18, 76th Congress, as amended by Public Law 262, 77th Congress.

(4) Persons retired from the Army, Navy, Marine Corps or Coast Guard, Regular Establishment, not having had war service who elect to receive compensation under laws administered by the Veterans' Administration in lieu of retirement pay (Pub. Law 314, 78th Cong.).

(b) Not subject to the eligibility provisions of §§ 17.47 and 17.48, for:

(1) Persons in active service with the United States Army (Public No. 177 and Public No. 852, 76th Cong.), or United States Navy or Marine Corps (Public No. 675, 70th Cong.), when duly referred with authorization therefor, may be supplied hospital treatment. Emergency treatment may be rendered such persons upon their own application, when absent from their commands: *Provided,* That covering formal authorization be procured as promptly as possible after the emergency treatment is begun.

(2) Hospital treatment may be provided, upon authorization, for beneficiaries of the Public Health Service, Bureau of Employees Compensation and other Federal agencies.

(3) Pensioners of nations allied with the United States in World War I and World War II, may be supplied hospital treatment when duly authorized.

(c) Emergency hospital treatment may be provided for:

(1) Persons having no prima facie eligibility therefor, as a humanitarian service.

(2) Persons admitted because of presumed discharge or retirement from the armed forces, but subsequently found to be ineligible as such.

(3) Employees (not potentially eligible as ex-members of the armed forces) and members of their families, when residing on reservations of field stations of the Veterans' Administration, and when they cannot feasibly obtain emergency treatment from private facilities.

(d) Persons comprehended under the provisions of paragraphs (b) and (c) of this section may be supplied hospitalization after the needs of emergency applicants under paragraph (a) of this section are fully met. Charges at prescribed rates will be made for the services rendered. (Sec. 1, 39 Stat. 742, ch. 85, 45 Stat. 1090, sec. 4, 53 Stat. 557, 1042, 1069, sec. 5, 54 Stat. 1137, ch. 425, 612, 55 Stat. 733, 850, 58 Stat. 230, 60 Stat. 526; 5 U. S. C. 751, 10 U. S. C. 298b, 455e, 24 U. S. C. 31, 32 U. S. C. 164d, 38 U. S. C. 12, 26c, 488 (note), 488a, 706b)

§ 17.47 *Eligibility for hospital treatment or domiciliary care of persons discharged, released or retired from active military or naval service.* Within the limits of Veterans' Administration facilities, hospital treatment or domiciliary care may be furnished the following applicants in the specified order of preference:

(a) Hospital treatment for: (1) Persons who served in the active military or naval forces during the period of World War I as defined in paragraphs I and IV, Veterans' Regulation No. 10, as amended (38 U. S. C., ch. 12); or in any war prior to the Spanish-American War; or during the Spanish-American War, Philippine Insurrection, or Boxer Rebellion from April 21, 1898, to July 4, 1902 (or to July 15, 1903, if the service was in Moro Province), or on or after December 7, 1941, and before twelve o'clock noon December 31, 1946, including those who had active duty as a member of the Women's Army Auxiliary Corps, Women's Army Corps, Women's Reserve of the Navy and Marine Corps and the Women's Reserve of the Coast Guard—when discharged under other than dishonorable conditions from a period of war service, and when suffering from an injury or disease incurred or aggravated in line of duty in that period of active military or naval service, and for which they are medically determined to be in need of hospital treatment.

(2) Persons retired from active military or naval service including members of the Fleet Naval Reserve or Marine Corps Reserve on retainer pay, who had honorable service in a period of war, as defined in subparagraph (1) of this paragraph, and are medically determined to need hospital treatment for an injury or disease that was incurred in line of duty in active military or naval service (Public No. 198, 76th Cong.; Pub. Law 365, 77th Cong.).

(3) Persons included in paragraph III, Part I, Veterans' Regulation No. 1 (a), (38 U. S. C. ch. 12), who are suffering from injuries or diseases incurred in line of duty, for which they are receiving disability compensation, and for which they are in need of hospital treatment.

(4) Persons included in Public Law 300, 78th Congress, who, on or after December 7, 1941, and before twelve o'clock noon December 31, 1946, suffered an injury or disease in line of duty for which they are receiving disability compensation and for which they are in need of hospital treatment.

(b) Hospital treatment for:

(1) Persons who were discharged or released under other than dishonorable conditions from active military or naval service for disability incurred or aggravated in line of duty or who are in receipt of compensation for service-connected or service-aggravated disability, when suffering from injuries or diseases incurred or aggravated in line of duty in such active service, and for which they are medically determined to be in need of hospital treatment. Cadets and midshipmen discharged from the academies at West Point, New London, and Annapolis who meet these requirements as to character of discharge or receipt of compensation are eligible under this paragraph, regardless of the requirement as to active military or naval service. (See also sec. 10, Pub. Law 144, 78th Cong.)

(i) For applicants not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Army or Navy, respectively, relative to findings of line of duty for its purposes, will be accepted in determining eligibility for hospital treatment under this paragraph; except that where the official records of the Army or Navy show a finding of disability not incurred or aggravated in line of duty and evidence is submitted to the Veterans' Administration which permits of a different finding, the decision of the Army or Navy will not be binding upon the Veterans' Administration, which will be free to make its own determination of line of duty incurrence or aggravation upon the evidence so submitted. It will be incumbent upon the applicant to present such controverting evidence and, until he so acts and a determination favorable to him is made by the Veterans' Administration, the finding of the Army or Navy will control and hospitalization will not be authorized. Such controverting evidence, when received from an applicant, will be referred to the adjudicating agency which would have jurisdiction if the applicant were filing claim for pension or disability compensation, and the determination of such agency as to line of duty, which is promptly to be communicated to the manager of the field station receiving the application for hospitalization, will govern his disapproval or approval of admission, other eligibility requirements having been met. Where the official records of the Army or Navy show that the disability on account of which a veteran was discharged or released from his peacetime service under other than dishonorable conditions was incurred or aggravated in line of duty, such showing will be accepted for the purpose of determining his eligibility for hospitalization, notwithstanding the fact that the Veterans' Administration has made a determination in connection with a claim for monetary benefits that the disability was incurred or aggravated not in line of duty. See also Public No. 648, 75th Congress, defining line of duty, whether on active duty or authorized leave, relative to applicants whose only military or naval service was in a period other than wartime.

(ii) When the applicant is in receipt of compensation for a service-connected or service-aggravated disability, inquiry will not be made as to the character of discharge from service.

(iii) In those exceptional cases where the official records of the Army or Navy show discharge or release under other than dishonorable conditions because of expiration of period of enlistment or any other reason save disability, but also show a disability incurred or aggravated in line of duty during the said enlistment; and the disability so recorded is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge for disability had the period of enlistment not expired or other reason for discharge or release been given, the chief medical director, upon consideration of a clear, full statement of the circumstances submitted to him is authorized to approve admission of the applicant for hospital treatment, provided other eligibility requirements are met. A typical case of this kind would be one where the applicant was under treatment for the said disability recorded during his service at the time discharge was given for reason other than disability.

(2) Persons retired from the Army of the United States under Public No. 18, 76th Congress, as amended by Public Law 262, 77th Congress, who had service only in a period other than wartime and who are suffering from a disease or injury incurred or aggravated in line of duty which is medically determined to require hospital treatment.

(3) Persons defined in § 17.46 (a) (4) who are in need of hospital treatment for that disease or injury for which they are receiving disability compensation.

(4) Persons included in Public Law 300, 78th Congress, who on or after August 27, 1940, and prior to December 7, 1941, suffered an injury or disease in line of duty for which they are receiving disability compensation and for which they are in need of hospital treatment.

(c) Hospital care for:

(1) Persons who were discharged or released from active military or naval service under other than dishonorable conditions for disability incurred or aggravated in line of duty, or who are in receipt of compensation for service-connected or service-aggravated disability, when suffering from nonservice-connected diseases or injuries requiring hospitalization. See also paragraph (b) (1) (i), (ii), (iii) of this section which apply here, and to subparagraph (2) of this paragraph.

(2) Domiciliary care for persons enumerated in subparagraph (1) of this paragraph, when suffering from a permanent disability or tuberculous or neuropsychiatric ailment and who are incapacitated from earning a living and who have no adequate means of support. If a member is discharged on his own request or at the expiration of seven days following an authorized pass or leave of absence, it will be presumed he no longer regards himself as incapacitated from earning a living. Under such circumstances he will not be furnished hospitalization or domiciliary care until the expiration of one month from the date of such discharge, except when requiring readmission in a medical emergency.

(3) Retired personnel of the classes comprehended by paragraph (b) (2) of this section may be supplied hospital treatment in a hospital or center under the direct and exclusive jurisdiction of the Veterans' Administration, if beds are available, and such applicants agree to pay the per diem rate to cover subsistence, which is set by the Administrator of Veterans' Affairs.

(d) Hospital treatment or domiciliary care for:

(1) Persons who serve in the active military or naval forces, including those who had active duty as a member of the women's army auxiliary corps, regardless of length of service, during a period of war as defined in paragraph (a) (1) of this section, who were (i) discharged or released from active duty under other than dishonorable conditions; (ii) who swear that they are unable to defray the expense of hospitalization or domiciliary care (including the expense of transportation to and from a Veterans' Administration facility); and (iii) who are suffering from a disability, disease or defect which, being susceptible of cure or decided improvement, indicates need for hospital care, or which, being essentially chronic in type and not susceptible of cure, or decided improvement by hospital care, is producing disablement of such degree and of such probable persistency as will incapacitate from earning a living for a prospective period, and thereby indicates need for domiciliary care. Except for applicants presenting emergent conditions, consideration in admissions under this subparagraph may be given to the length or character of service.

(2) Persons retired from active military or naval service including members of the Fleet Naval Reserve or Marine Corps Reserve on retainer pay, who had honorable service in a period of war, as defined in paragraph (a) (1) of this section, and who meet the other eligibility requirements of subparagraph (1) of this paragraph (Public No. 198, 76th Cong.; Pub. Law 365, 77th Cong.).

(3) If a member is discharged on his own request or at the expiration of seven days following an authorized pass or leave of absence, it will be presumed he no longer regards himself as incapacitated from earning a living. Under such circumstances he will not be furnished hospitalization or domiciliary care until the expiration of one month from the date of such discharge except when requiring readmission in a medical emergency. (Sec. 4, 53 Stat. 557, 1069, ch. 425, 612, 55 Stat. 733, 850, sec. 10, 57 Stat 556, 58 Stat. 219, 230; 10 U. S. C. 298b, 28 U. S. C. 375, 38 U. S. C. 12, 26c, 706b, 730)

§ 17.48 *Definitions applicable in determining eligibility for hospital treatment or domiciliary care.* (a) Under § 17.47 (c) (2):

(1) A "permanent disability" will be taken to mean such impairment of mind or body as may reasonably be expected to continue throughout the remainder of the applicant's life, or any condition listed in § 3.86 of this chapter. A permanent disability must be such as would materially interfere with the following of any substantially gainful occupation. This must be for medical determination, which shall not be influenced by the applicant's inability—due to industrial conditions, lack of personal initiative, or any other reason than disability due to disease or injury—to secure gainful employment. The infirmities resulting from advancing years when taken collectively, while not considered a disease entity, may be interpreted to be within the meaning of "disease" as used herein. A person who, at the time of his application for domiciliary care has been rated 75 percent or more disabled for pension or disability compensation purposes will be held to be prima facie incapacitated within the meaning of this paragraph.

(2) A permanent disability, as contemplated, is exemplified in chronic, severe types of general medical diseases, such as myocarditis, valvulitis, cardiovascular disease, nephritis, arthritis, etc., and in blindness, loss of parts or use of parts, etc. But injuries or diseases such as reparable hernia, chronic appendicitis, cholecystitis, cholelithiasis, nephrolithiasis, etc., are not essentially permanent, as contemplated, in that surgical intervention may remove the disability.

(3) "No adequate means of support": When an applicant is receiving an income of $100 or more per month from any source, this fact will be considered prima facie evidence that he has adequate means of support, except when he is in fact contributing in whole or part from such income to the support of a wife, child, mother or father. If the applicant alleges he is contributing to the support of dependents other than these, the alleged circumstances will be submitted to the Manager for decision as to eligibility for admission.

(b) Under § 17.47 (d):

(1) "Any disability, disease or defect" will comprehend any acute, subacute or chronic disease (of a general medical, tuberculous or neuropsychiatric type) or any acute, subacute or chronic surgical condition, susceptible of cure or decided improvement by hospital care; or any condition which, not susceptible of cure or decided improvement by hospital care, indicates need for domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such incidental medical care as is needed. To be entitled to domiciliary care the applicant must consistently have a disability, disease or injury which, chronic in type and not susceptible of cure or decided improvement by hospitalization, is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period. Defects such as constitutional psychopathic inferority or mental deficiency, without superimposed psychosis or psychoneurosis, will not indicate hospital treatment, but will entitle to domiciliary care, other requirements being met, if such defects are producing material social and industrial inadaptability.

(2) "Unable to defray expenses of hospitalization or domiciliary care (including transportation to and from a Veterans' Administration facility):" The affidavit of the applicant of VA Form 10–P–10 that he is unable to defray the expenses of hospitalization or domiciliary care (including transportation to and from a Veterans' Administration facility) will constitute sufficient warrant to furnish hospitalization or domiciliary care (including Government transportation to cover transportation to the facility) but, having in mind the penal provisions of the law governing the making of false sworn statements, managers will report to central office any and all cases in which they suspect false statements as to inability to defray the expenses of hospitalization or domiciliary care (including transportation). Such reports will include all the facts, with comment and recommendation.

(c) Persons applying for hospital treatment under paragraph (c) or (d) of § 17.47 and who are potentially entitled to other hospital treatment or to reimbursement for the costs of hospital treatment because of membership in a union, fraternal organization, or group hospitalization plan under commercial insurance companies' policies covering illness or injury; or as beneficiaries of a State Industrial Commission or Employees Compensation Commission, etc., will not be furnished hospital treatment without charge therefor to the extent of such reimbursement. Action will be taken to effect collection from the persons, companies, organizations or agencies (other than Federal) in the amounts determined payable under the terms of the applicable insurance policy, plan, agreement or other undertaking.

§ 17.50 *Utilization of facilities other than those under direct and exclusive jurisdiction of the Veterans' Administration.* For the purposes of Veterans Regulation No. 10 (b), Paragraph XIX (38 U. S. C. ch. 12), defining "Veterans' Administration facilities" and section 1500, Public 346, 78th Congress, granting authority to the Administrator of Veterans' Affairs "To enter into contracts or agreements with private or public agencies or persons for necessary service, including personal services, as he may deem practicable," the following provisions will govern in authorizing admissions to facilities other than those under the direct and exclusive jurisdiction of the Veterans' Administration:

(a) Hospitalization will not be authorized in Government facilities other than those over which the Veterans' Administration has direct and exclusive jurisdiction until agreement covering such service has been approved. Such agreements, will not be entered into until careful consideration has been given to the best interests of both the Government and beneficiaries.

(b) (1) Private facilities will not be used for hospitalization of beneficiaries except when facilities under direct and exclusive jurisdiction of the Veterans' Administration or other Government facilities under agreement are not feasibly available, or when the physical or mental condition of beneficiaries will not allow of their transfer thereto from a private, State, or municipal hospital. Male beneficiaries in need of treatment of an emergent condition (i) arising from a service-connected disorder; or (ii) which in medical judgment requires treatment to prevent interruption of training authorized under Public Law 16, 78th Congress, may be authorized hospitalization in any private, State, or municipal hospital, preferably one under contract. In such medically emergent cases authorization of admission to a private, State, or municipal hospital may be given, subject to the conditions stipulated in subparagraph (2) of this paragraph and, when so given, will be authority for payment of vouchers covering the cost of such hospitalization. Hospitalization of male beneficiaries in a private, State, or municipal hospital under contract may also be authorized for treatment of (i) a nonemergent service-connected condition; (ii) that condition determined as incurred or aggravated in line of duty in active Federal service and for which the applicant was discharged under conditions other than dishonorable, provided service connection for such disability has not been denied by the Veterans' Administration and (iii) a nonemergent nonservice-connected condition which in medical judgment requires treatment to prevent interruption of training authorized under Public Law 16, 78th Congress, provided facilities under direct and exclusive jurisdiction of the Veterans' Administration or other Government facilities under agreement are not feasibly available.

(2) The chief medical officer or his designate, of the regional office or center having jurisdiction of the territory in which the concerned private, State, or municipal hospital, contract or noncontract, is located, when informed of the emergent condition of the entitled beneficiary in time to authorize the hospital admission or when requested to issue authorization to cover a hospital admission already effected, will at once notify the superintendent of such hospital as follows: (i) That payment cannot be made by the Veterans' Administration for any hospital service or supplies furnished prior to the date that request for authorization for admission was made. (Except that where such request for authorization was dispatched to the Veterans' Administration within seventy-two hours after the date and hour of admission, the effective date of authorization will be the admission date. Otherwise the date of request for authorization will be the postmark date of a letter request, dispatch date of a telegraph request or the date a telephonic request is received); (ii) that, if the hospital concerned is under contract with the Veterans' Administration, all services and supplies furnished the beneficiary must be charged for and paid only at rates in accordance with the terms of the contract; (iii) that, if the hospital concerned is not under contract, all services and supplies can be paid for only at rates considered reasonable and not in excess of those customarily charged the general public for similar services in the hos-

pital where rendered; (iv) that, when possible, prior authority will be requested by the hospital for the furnishing of services or supplies other than those included in a contract, or other than those comprehending ordinary items; (v) but when the procurement of such prior authority is not possible, or when the emergent condition of the beneficiary is too urgent for delay, the hospital may furnish such necessary services or supplies, with the understanding that charges therefor will be subject to determination as to their reasonable necessity by the chief medical officer or his designate. (See also §§ 17.40 to 17.48.)

(c) In the territories and insular possessions of the United States, preference will be given to Federal hospitals, and contracts will be made with private territorial or insular hospitals only when Federal hospitals are not available. Authorization of hospitalization in such territories and possessions is restricted to hospitals under agreements or contracts and admissions to private hospitals not under contract will not be authorized without prior approval of the chief medical director or his designate: *Provided,* That when immediate hospitalization is necessary for treatment of an emergent service-connected condition in a war veteran admission to a noncontract hospital may be authorized if no Federal or contract private hospital be feasibly available, and that the stipulations specified in paragraph (b) (2) of this section are communicated to the superintendent of such noncontract private hospital. While admission to private hospitals in the territories and insular possessions will in general be restricted to applicants who had service in a war, such hospitals may also be used for applicants who had peacetime service only, if needed for treatment of an emergent service-connected condition. The use of such private hospitals is prohibited for applicants who had peacetime service only, if required for treatment of a disease or injury not attributable to military or naval service, or for a service-connected condition that is not medically emergent.

(d) The general principles to be observed in utilization of facilities other than those over which the Veterans' Administration has direct and exclusive jurisdiction will be as follows: Other Government facilities under agreements or private facilities under contracts will be used for the hospitalization of beneficiaries requiring hospital treatment in accordance with the foregoing instructions, only when facilities under direct and exclusive jurisdiction of the Veterans' Administration are not feasibly available, or when the urgency of the applicant's medical condition, the relative distance of the travel involved, or the nature of the treatment required in the individual case, make it necessary or economically advisable to utilize such other institutions instead of a facility under direct and exclusive jurisdiction of the Veterans' Administration.

Except where prior approval of the chief medical director or his designate is required under the provisions of this paragraph, admissions to other Government, private, State, or municipal hospitals may be authorized by managers of regional offices and centers with regional office activities through chief medical officers or their designates.

(e) Women war veterans, needing treatment, in a medical emergency, for a condition either service connected or not service connected, may be authorized admission to a private hospital not under contract, if a Government or private contract facility is not feasibly available. In these medically emergent cases the authority for admission to a private hospital not under contract will also be authority for payment of vouchers covering necessary services or supplies furnished in accordance with the stipulations specified in paragraph (b) (2) of this section.

(f) Managers of regional offices and centers with regional office activities through chief medical officers or their designates, are empowered to authorize admission to private hospitals, under contract, of women war veterans suffering from nonservice-connected diseases or injuries, as well as service-connected conditions, in a medical emergency or otherwise: *Provided,* That a Government facility is not feasibly available; the condition of such beneficiary, if already so hospitalized, will not safely allow of her transfer to a Government facility; or the relative travel involved in admission to a Government facility, the medical condition existing, or the nature of the treatment required, make it advisable or economical to utilize the contract facility.

(g) Pregnancy and parturition will not entitle to hospitalization, either in facilities under direct and exclusive jurisdiction of the Veterans' Administration, or in other Government, private, municipal, or State hospitals, unless complicated by a pathological condition.

(h) The prior approval of the chief medical director or his designate must be secured for the use of private, State, or municipal facilities covered by contracts, and located either within the continental limits of the United States or in the insular possessions or territories, for the hospitalization in such facilities of beneficiaries in excess of the number of beds contracted for, except where immediate hospitalization is indicated for treatment of a medically emergent service-connected disease or injury. The number of beds set apart by agreements with other Government facilities, for treatment of Veterans' Administration beneficiaries may be exceeded during any month as necessitated with the consent of the commanding officer of the hospital concerned: *Provided,* That the utilization thereof be correspondingly reduced in other months, so that the average monthly use of such beds, at the end of the fiscal year, will not have exceeded the total allocation.

(i) An applicant whose eligibility for hospitalization (whether for observation or treatment, or whether for a service-connected or nonservice-connected condition) had been determined, whose admission to a Veterans' Administration facility had been authorized and who had been supplied transportation therefor, but who, while en route to the designated facility (or en route from it after completion of service and regular discharge, with transportation furnished to a designated point), develops an unavoidable and unforseen medical emergency that forbids continuance of such travel and requires admission to a private hospital or treatment by a private physician, will be entitled to such necessary services at the expense of the Government, including any extra transportation costs (ambulance or otherwise) that were actually necessitated in the circumstances.

(1) If the chief medical officer or his designate of the territory concerned is informed of such emergency hospital admission or such physician's treatment before or shortly after the beginning of the services, authorization for the services, followed by payment of bills therefor, may be made in accordance with the terms of paragraph (b) (2) of this section.

(2) If the chief medical officer or his designate had not authorized such hospitalization or such physician's services, he may nevertheless certify for payment bills from the hospital superintendent or the attending physician, provided determination is made of the actual necessity for the items of service rendered, and payment is at fees considered reasonable and not in excess of those customarily charged the general public for similar services in the hospital where rendered.

(3) Subject to the same controlling conditions as in subparagraph (2) of this paragraph, the chief medical officer or his designate may authorize reimbursement of the beneficiary or his representative if either had paid bills submitted by the superintendent of the hospital or by the physician who had attended the beneficiary, and had submitted those receipted bills.

(j) Payment or reimbursement for emergency medical treatment and hospitalization through facilities other than governmental as provided in paragraph (i) of this section, may be authorized where a veteran granted vocational rehabilitation pursuant to the provisions of Public Law 16, 78th Congress, is furnished transportation and ordered to report to a designated school, proceeds in accordance with said orders and becomes ill while en route, if there is no intervening factor for which he is responsible which would affect or change his status. (Sec. 1500, 58 Stat. 300; 38 U. S. C. 697)

§ 17.51 *Travel for hospitalization in medical emergencies.* Prior authority must always be obtained for travel incident to hospital treatment or domiciliary care. Ordinarily such authority will be issued when a veteran is notified of approval of his application, and transportation, meal and lodging requests, as necessitated, are sent to him or his representative. But when an applicant's condition is medically emergent, authority for travel may be extended by telephone or telegraph, subject to the procedure provided therefor.

OUT-PATIENT TREATMENT

§ 17.60 *Out-patient treatment.* (a) Out-patient treatment, medical or dental, including necessary medicines, prosthetic appliances and other supplies, may be rendered to the following applicants under the conditions stated:

(1) Persons discharged or released from active military or naval service, including those who had active duty as a member of the Women's Army Auxiliary Corps and officers retired for disability under the provisions of the Emergency Officers Retirement Act (Public No. 506, 70th Cong., as amended) who served during a period of war as defined in § 17.47 (a) (1) and who are in need of treatment for a disease or injury adjudicated by the Veterans' Administration as incurred or aggravated in such war service.

(2) Persons included in paragraph III, Part I, Veterans' Regulation No. 1 (a), and paragraph IV, Part II, Veterans' Regulation No. 1 (a) (approved May 11, 1944) (38 U. S. C. ch. 12), who are in need of treatment for an injury or disease incurred in line of duty and for which they are receiving disability compensation.

(3) Persons retired under the provisions of Public No. 18, 76th Congress, as amended by Public Law 262, 77th Congress, who are in need of treatment for a disease or injury determined as incurred or aggravated in line of duty in active service.

(4) Retired members of the Regular Establishment who have elected, under Public Law 314, 78th Congress, to receive compensation for a service-connected condition and who are in need of treatment for such condition.

(5) Persons who were discharged or released under other than dishonorable conditions from active military or naval service for disability incurred or aggravated in line of duty in active service or who are in receipt of compensation for service-connected or service-aggravated disability. A formal claim for disability compensation will not be required of an applicant eligible for out-patient treatment by reason of discharge for disability incurred or aggravated in line of duty; and a denial of a claim for disability compensation will not debar out-patient treatment for such disability. (See determination of line of duty, § 17.47 (b) (1) (i) and (iii).)

(6) Persons pursuing a course of vocational training authorized under Public Law 16, 78th Congress, who are in need of treatment to avoid interruption of such training.

(7) Persons properly referred by authorized officials of other Federal agencies for which the Administrator of Veterans' Affairs may agree to render such service under conditions stipulated by him and pensioners of nations allied with the United States in World War I and World War II when duly authorized. Charges for treatment of patients of the classes specified herein will be at prescribed rates.

(8) Employees of the Veterans' Administration, their families, and the general public in emergencies, subject to conditions stipulated by the Administrator of Veterans' Affairs. Charges for treatment of patients specified herein will be at prescribed rates.

(b) While out-patient treatment is primarily authorized only for service-connected or service-aggravated conditions, adjunct out-patient treatment for a non-service-connected condition which is associated with and held to be aggravating disability from a disease or injury service connected or service aggravated may be also authorized in accordance with prescribed principles for persons defined in subparagraphs (a) (1) through (5) of this section. The opinion of the branch medical director may be requested in any individual case where advice as to the propriety of furnishing adjunct treatment is desired. (53 Stat. 557, ch. 425, 55 Stat. 733, sec. 3, 57 Stat. 21, 45, 58 Stat. 219, 230, 60 Stat. 526; 10 U. S. C. 298b, 28 U. S. C. 375, 38 U. S. C. 12, ch. 12 (note), 26c, 488 note, 488a)

§ 17.62 *Charges for persons ineligible for services at Veterans' Administration expense.* Charges for medical services, dental services, or domiciliary care, including necessary medicines, orthopedic or prosthetic appliances, and other supplies furnished by the Veterans' Administration to persons not entitled thereto under laws bestowing such benefits to veterans will be made at such rates as may be fixed by the Administrator of Veterans Affairs.

HOSPITAL DISCHARGE OF ACTIVELY TUBERCULOUS PATIENTS

§ 17.65 *Statutory discharge*—(a) Beneficiaries with active tuberculosis, the disability from which has been adjudicated as attributable to service in World War I who have been hospitalized for a continuous period of 1 year under proper medical supervision; whose condition, it is adjudged, will not reach arrest by further hospitalization; and whose discharge from hospital treatment will not be prejudicial to themselves or their families, will be potentially eligible for the statutory hospital discharge authorized in section 202 (3), World War Veterans' Act, 1924, as provided by Public No. 141, 73d Congress.

(b) Actively tuberculous patients whose discharge from hospital treatment is not disapproved by the chief medical officer or clinical director will be so discharged if proper investigation by the office concerned discloses the following necessities of home environment: A sanitary domicile where reasonable comforts and care can be provided, such as a well-ventilated room or porch, good food, fresh air, etc.; relatives or friends who can assume the obligations of continued nursing care, who know how properly to safeguard themselves from infection by proper disposition of the patient's sputum, and who can furnish, on forms supplied by the Veterans' Administration, the information necessary for administrative supervision, feasibility of keeping infants and young children from infection by the patient; facilities to provide for not less than 18 hours a day in bed or in a "curing chair."

(c) Discharge, not under Public, No. 141, 73d Congress, where there has not been 1 year's continuous hospitalization. Beneficiaries suffering from active tuberculosis who have not had 1 year's continuous hospitalization under proper medical supervision but who fulfill all other conditions specified in paragraph (a) of this section may be permitted discharge from hospital treatment for "maximum benefit" but not under the provisions calling for the post-hospital statutory award in section 202 (3), World War Veterans' Act, 1924, as provided by Public No. 141, 73d Congress. If there is probability of further improvement of these patients by hospitalization, it will be continued.

DISCIPLINARY CONTROL OF BENEFICIARIES RECEIVING HOSPITAL TREATMENT OR DOMICILIARY CARE

§ 17.66 *Authority for disciplinary action.* (a) The good conduct of beneficiaries receiving hospitalization for observation and examination or for treatment, or receiving domiciliary care in facilities under direct and exclusive jurisdiction of the Veterans' Administration, will be maintained by corrective and disciplinary procedure formulated by the Veterans' Administration. Such corrective and disciplinary measures, to be selectively applied in keeping with the comparative gravity of the particular offense, will consist, in respect to hospital patients, of the withholding for a determined period of pass privileges, exclusion from entertainments, or disciplinary discharge; and, in respect to domiciled members, such penalties as confinement to barracks or grounds, deprivation of privileges, performance of extra duty without pay for a stated period, enforced furlough, or dropping from rolls.

(b) Discharge for infraction of hospital discipline will carry the accompanying penalty of exclusion from rehospitalization except in a medical emergency, and from domiciliation, for a prescribed period, with denial of Government transportation to cover return travel upon such discharge or to cover rehospitalization in a medical emergency, unless the offender executes affidavit of inability to defray the expenses of such travel. Likewise, exclusion from domiciliary care for a stated period will exclude an offender from hospital treatment (except in a medical emergency) for such stated period.

(c) The penalties prescribed in paragraph (b) of this section will be applicable to those persons receiving hospitalization in other Government or private facilities as beneficiaries of the Veterans' Administration and members of State soldiers' homes on whose behalf said home is receiving Federal aid payments, who are discharged therefrom for an offense similar in nature for which the Veterans' Administration would give an irregular discharge if such persons had been patients or members in a Veterans' Administration hospital or center. (Sec. 11, 43 Stat. 611; 38 U. S. C. 439)

REIMBURSEMENT FOR LOSS BY FIRE OF PERSONAL EFFECTS OF HOSPITALIZED PATIENTS

§ 17.75 *Conditions of custody.* When the personal effects of a patient who has been or is hospitalized in a Veterans' Administration hospital or center were or are duly delivered to a designated location for custody and loss of such personal effects has occurred or occurs by fire, either during such storage or during laundering, reimbursement will be made as provided in §§ 17.76 and 17.77. (Sec. 5, 44 Stat. 792; 38 U. S. C. 458)

§ 17.76 *Submittal of claim for reimbursement.* The claim for reimbursement for personal effects damaged or destroyed will be submitted by the patient to the supply officer. The patient will separately list and evaluate each article with a notation as to its condition at the time of the fire, i. e., whether new, worn, etc. The date of the fire will be stated. It will be certified by a responsible official that each article listed was stored in a designated location at the time of loss by fire or was in process of laundering. He will further state whether the loss of each article was complete or partial, permitting of some further use of the article. The supply officer will certify that the amount of reimbursement claimed on each article of personal effects is not in excess of the fair value thereof at time of loss. The certification will be prepared in triplicate, signed by the responsible officer who made it, and countersigned by the manager of the hospital or center. After the above papers have been secured, voucher will be prepared, signed, and certified, and forwarded to the finance officer for his approval, payment to be made in accordance with finance procedure. The original list of property and certificate are to be attached to voucher. (Sec. 5, 44 Stat. 792; 38 U. S. C. 458)

§ 17.77 *Claims in cases of incompetent patients.* Where the patient is insane and incompetent, he will not be required to make claim for reimbursement for personal effects lost by fire as required under the provisions of § 17.76. The responsible official will make claim for him, adding the certification in all details as provided for in § 17.76. After countersignature of this certification by the manager, payment will be made as provided for in § 17.76, and the amount thereby disbursed will be turned over to the manager for custody. (Sec. 5, 44 Stat. 792; 38 U. S. C. 458)

NOTE: *Accounts of sales and collections.* See Veterans' Administration Medical Procedures.

TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES

§ 17.100 *Purposes.* Transportation at Government expense may be supplied eligible claimants and beneficiaries of the Veterans' Administration for these purposes:

(a) *Admissions for hospitalization or domiciliary care.* (1) Hospital admission of applicants under § 17.47 (a) and (b), for treatment of service-connected conditions.

(2) Hospital admission of applicants under § 17.47 (c) and (d) for treatment of nonservice-connected conditions, provided such applicants, except those whose admission is arranged to prevent interruption of training authorized under Public No. 16, 78th Congress, as amended have made sworn statement upon application, Form P–10, that they are unable to defray expense of transportation.

(3) Hospital admission for observation and examination.

(4) Admission for domiciliary care of applicants under § 17.47 (c) (2) and (d), provided applicants have made sworn statement of inability to defray expense of transportation.

(b) *Readmissions for hospital treatment or domiciliary care.* (1) Hospital readmissions, when medically determined necessary to observe progress, modify treatment or diet, etc.

(2) The furnishing of transportation incident to readmission for domiciliary care will require prior consent of the branch medical director or his designate.

(3) No transportation will be furnished a person whose period of exclusion from hospital treatment or domiciliary care for infraction of discipline has not expired, except when emergent hospital treatment is required, and the applicant executes affidavit that he is unable to defray the expense of transportation to accomplish travel for readmission for such emergent hospital treatment.

(c) *Inter-station transfers for treatment, diagnosis or domiciliary care.* Prior consent of the branch medical director or his designate will be had for transfers of patients en bloc within the branch area, and of both branch medical directors or their designates if interbranch transfers are involved. Transfers from hospital treatment to domiciliary care, will require prior consent of the branch medical director or his designate.

(d) *Discharge from hospitalization or domiciliary care.* (1) Upon completion of hospitalization for treatment, or for observation and examination, and regular discharge, return transportation to the point from which the beneficiary had proceeded; or to another point if no additional expense be so caused the Government.

(2) A patient in a terminal condition may be discharged to his home, or transferred to a hospital suitable and nearest his home, regardless, whether travel so required exceeds that covered in proceeding to hospital of original admission.

(3) The furnishing of transportation to effect discharge of a member from domiciliary care will require prior consent of the branch medical director or his designate.

(4) No return transportation will be supplied a patient who receives an irregular discharge from hospital treatment, unless he executes an affidavit of inability to defray expense of return transportation.

(e) *Out-patient physical examination.* Subject to exceptions defined in paragraph (g) of this section.

(f) *Out-patient treatment.* For service-connected conditions, including adjunct treatment thereof, and for nonservice-connected conditions to prevent interruption of training authorized under Public Law 16, 78th Congress, as amended, subject to exceptions defined in paragraph (g) of this section.

(g) *Limitations.* (1) Claimants or beneficiaries residing in the city or town where their out-patient examination is to be made or out-patient treatment rendered, or in such proximity to such city or town that it may be considered their place of residence, will not be furnished transportation for such out-patient service, except that a station vehicle may be used or expense of common carrier transportation allowed, when the fare involved exceeds ten cents each way, and the deputy administrator of the branch area involved approves the exercise of this special authority at selected points.

(2) Transportation for out-patient treatment will not be supplied an applicant whose period of exclusion from hospital treatment or domiciliary care for a disciplinary offense has not expired.

(3) No return transportation will be supplied a claimant or beneficiary who has not completed an out-patient service, unless he executes an affidavit that he is unable to defray the expense of such travel.

(h) *Advance authority required.* All travel for the purposes set forth in paragraphs (a) to (f) of this section must be authorized in advance. In emergent hospital admissions, such prior authority may be given by telephone or telegraph, subject to confirmation in writing by the authorizing employee.

(i) *Accessories of transportation.* The accessories of transportation, meals and lodging en route, pullman accommodations and accompaniment by an attendant or attendants may be authorized when determined necessary for the travel.

(j) *Furnishing transportation and other expenses incident thereto.* In furnishing transportation and other expenses incident thereto, as defined, the Veterans' Administration may (1) issue requests for transportation, meals and lodging; or (2) reimburse the claimant, beneficiary or representative for payment made for such purpose, upon due certification of vouchers submitted therefor; or (3) make mileage allowance.

(k) *Transportation of other than Veterans' Administration beneficiaries.* Transportation of beneficiaries of other Federal agencies, incident to medical services rendered upon requests of those agencies, will not be furnished by the Veterans' Administration. Transportation requests incident to medical services rendered Canadian and British Imperial pensioners will be subject to reimbursement by the Department of Veterans Affairs, Canada. (Sec. 2, 54 Stat. 1193, 60 Stat. 526, 38 U. S. C. ch. 12 (note), 488 note, 488a)

ORTHOPEDIC AND PROSTHETIC APPLIANCES

§ 17.115 *Types, fitting and training, and eligibility to appliances and repairs thereto.* (a) Orthopedic or prosthetic appliances furnished entitled beneficiaries of the Veterans' Administration will be of approved types. Repairs or replacements of appliances of approved types may be made, as provided, when necessitated in medical judgment, because of wear, loss not due to negligence of the beneficiaries, or for other sufficient reasons.

(b) Dental prostheses are not comprehended as orthopedic and prosthetic appliances.

(c) Beneficiaries supplied prosthetic appliances will be additionally entitled to fitting and training in the use of the appliances; and such service may be obtained under contract, if determined necessary by the branch medical director of the area involved, or his desig-

nate. (Sec. 104, title I, Pub. Law 346, 78th Cong., as amended)

(d) Artificial limbs and other prosthetic or orthopedic appliances of a permanent type may be purchased, made or repaired for, and special clothing made necessary by wear of such appliances may be furnished to:

(1) Out-patients entitled to and in need of such appliances, etc., (i) for a disease or injury which is service connected; or (ii) for an associated condition, not attributed to military or naval service, but held to be aggravating the disability from a service-connected disease or injury (adjunct treatment).

(2) Hospitalized patients; when medically held needed for (i) a service-connected condition; (ii) an associated disease or injury held to be aggravating disability from a service-connected disorder (adjunct treatment); (iii) a disease or injury, not attributed to military or naval service, for which hospitalization had been authorized; or (iv) for a condition, also not service connected, that is associated with and held to be agravating disability from the disease or injury for which the patient had been admitted to hospital (auxiliary treatment). Repair or replacement of a previously supplied artificial limb will not be considered invariably necessitated because of surgical treatment of a stump in itself, e. g., for ulcer or neuroma. But when, because of reamputation or other treatment, or a disease process resulting in atrophy, sufficient change in the contour of the stump occurs, alteration or replacement of a socket or other part of the artificial limb, or, if necessary, the furnishing of a new limb, will be authorizable. Like authority may be exercised when, upon hospitalization of a beneficiary for treatment of a stump, it is medically determined that the artificial limb he had been wearing is defective or improperly fitted, and is creating the necessity for treatment of the stump. Alteration of the appliance or, if clearly necessary, the furnishing of a new artificial limb, may then be held a proper part of the patient's treatment.

(3) Domiciled members, when medically held needed for (i) a service-connected condition; (ii) a disease or injury not service connected, but held to be aggravating disability from a service-connected condition (adjunct treatment); (iii) appliances, not considered for furnishing under subdivisions (i) or (ii) of this subparagraph may nevertheless be procured or repaired for domiciled members, when medically determined necessary as an incident of domiciliary care.

(4) Persons pursuing a course of training under Public No. 16, 78th Congress, when medically determined as essential to prevent interruption of such training. (Sec. 104, 58 Stat. 285, sec. 2, 59 Stat. 623; 38 U. S. C. 693d)

§ 17.116 *Retired personnel.* (a) (1) Pursuant to the provisions of Public No. 308, 78th Congress, approved May 23, 1944, an artificial limb or other appliance will be supplied or repaired when medically determined necessary, for any officer or enlisted man retired from the Army, Navy, Marine Corps, or Coast Guard who had lost a limb or the use thereof through injury or disease incurred or contracted in line of duty in the military or naval service at any time.

(2) No commutation in lieu of such artificial limb or other appliance will be payable on or after May 23, 1944.

(3) "Other appliances" will be taken to mean braces, etc., for support of a part in which function has been lost or much impaired.

(4) Such artificial limbs or other appliances or repairs thereto will be supplied at field stations in accordance with the general procedure pertaining to the furnishing of orthopedic and prosthetic appliances.

(b) Persons defined in paragraph (a) (1) of this section who are furnished an artificial limb or other appliance will be additionally entitled to fitting and training in the use thereof. (Sec. 104, title I, Pub. Law 346, 78th Cong.) (Sec. 104, 58 Stat. 225, 285; 38 U. S. C. 693d, 706b)

§ 17.118 *Guide dogs or mechanical and electronic equipment for blind beneficiaries.* (a) Pursuant to the provisions of Public Law 309, 78th Congress, approved May 24, 1944, blind ex-members of the armed forces entitled to disability compensation or pension for a service-connected disability may be furnished a trained seeing-eye or guide dog. In addition, they may be supplied the necessary travel expenses to and from their places of residence to the point where adjustment to the seeing-eye or guide dog is available and meals and lodging during the period of adjustment, provided they are required to be away from their usual places of residence during the period of adjustment.

(b) Mechanical and electronic equipment considered as aiding in overcoming the handicap of blindness may also be supplied beneficiaries defined in paragraph (a) of this section. (VA medical procedures.) (58 Stat. 226; 38 U. S. C. 251)

DENTAL SERVICES

§ 17.120 *Authorization of dental examinations.* When a detailed report of dental examination is essential for a determination of eligibility for benefits, a chief, dental service, or other empowered official may authorize dental examinations for the following classes of claimants or beneficiaries:

(a) Those having a dental disability adjudicated as incurred or aggravated in military or naval service in war or peacetime, or those requiring examination to determine whether the dental disability is service connected.

(b) Those having service-connected disability from disease or injury other than dental, but with an associated and not service-connected dental condition that is considered to be aggravating the basic service-connected disorder.

(c) Those for whom a dental examination is ordered as a part of a general physical examination.

(d) Those requiring dental examination during hospital treatment or domiciliary care.

(e) Those held to have suffered dental injury or aggravation of an existing dental injury, as the result of examination, hospitalization, or medical or surgical (including dental) treatment that had been awarded.

(f) Those requiring dental examination for determination of necessity of dental treatment to prevent interruption of vocational training authorized under Public Law 16, 78th Congress:

(g) Those for whom a special dental examination is authorized by the medical director.

§ 17.123 *Authorization of dental treatment.* Dental treatment may be authorized for the following classes of beneficiaries:

(a) *Class I.* Those having service-connected compensable or pensionable dental or oral disabilities.

(b) *Class II.* Those having service-connected non-compensable or non-pensionable dental or oral disabilities.

(c) *Class III.* Those having a dental condition, not service connected, but medically determined to be aggravating disability from an associated systemic disorder that is either service connected or not service connected (see adjunct and auxiliary treatment).

(d) *Class IV.* Those receiving domiciliary care who require dental treatment.

(e) *Class V.* Those pursuing a course of vocational training authorized under Public Law 16, 78th Congress, who require dental treatment to prevent interruption of training. (See also §§ 17.30 and 17.60.)

§ 17.124 *Emergency dental treatment.* Emergency dental treatment may be authorized by a chief medical officer, clinical director, chief of service, or other full-time physician or dentist of the Veterans' Administration for beneficiaries as provided in Veterans' Administration medical procedures. Emergency dental treatment will comprehend the alleviation of pain or extreme discomfort, the adequate remediation of a dental or oral condition which is determined to be immediately endangering the life or health of the individual. Such emergency treatment which may be furnished an applicant whose prima facie eligibility therefor has been shown, but whose claim for benefits has not yet received favorable adjudication, will not in itself entitle the applicant to further dental treatment that may be indicated unless and until his eligibility for such continuous treatment is duly determined.

§ 17.129 *Extent of dental treatment.* The type and extent of dental treatment in any individual case will be determined by a dental officer of the Veterans' Administration in accordance with the following principles:

(a) In Class I (see § 17.123), any dental treatment indicated as reasonably necessary to retain masticatory function may be authorized.

(b) (1) In Class II, any treatment indicated as necessary for the correction of wartime service-connected dental disabilities may be authorized as well as for peacetime service-connected dental disabilities, provided the applicant was discharged under conditions other than dishonorable on account of a disability incurred in line of duty, or is in receipt of pension for a service-incurred disability. When diseased teeth (the disability from

which is service connected) are to be replaced by means of artificial dentures, all other diseased teeth in the same maxilla may be extracted, if necessary, and the dentures may be constructed accordingly. This principle will also apply when extraction is indicated for mechanical reasons. But in constructing bridges for missing teeth, the loss of which has not been attributed to military or naval service, only mechanical necessity will permit consideration of such missing teeth in designing the bridge.

(2) When service connection has been established only for teeth missing from one maxilla, and artificial dentures for both jaws are determined necessary to meet proper treatment indications, extractions of teeth in the opposing maxilla may be made.

(3) Missing third molar teeth, loss of which has been attributed to military or naval service, will not be replaced; nor will such circumstances be held to call for replacement of other missing teeth whose loss is not service connected.

(c) In Class III, treatment will be rendered, as adjunct or auxiliary measures, for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon an associated basic disease.

(d) In Class IV, sufficient treatment will be rendered domiciliary members to keep their mouths in hygienic and comfortable condition, with sufficient masticatory surface to maintain health.

(e) In Class V, treatment other than emergency, will consist only of such measure as may be reasonably necessary to prevent the interruption of an authorized course of vocational training.

§ 17.135 *Replacement of dental prosthesis.* (a) Dental prosthesis (i. e., fillings, bridges and dentures), furnished for treatment of service-connected dental disease or injury, which have been broken or become unserviceable through legitimate wear and deterioration, may be replaced, provided the condition is still shown to be service connected by the final dental rating promulgated under current rating instructions. Usually prosthesis, especially fillings and fixed bridges, should give at least two years service, and this should be considered in these cases. In average cases in which fillings and fixed bridges inserted by designated dentists fail within two years, due to faulty technique or engineering, the claimant, if practicable, will be referred back to the designated dentist who rendered the treatment, who will be required to adjust the defective prosthesis; if this cannot be done, or if the designated dentist declines to make good the defect, determnation will be made by the chief, dental service, as to the advisability of requesting a refund. In considering such cases due consideration will be given to the veteran's physical condition, and any unusual or extenuating conditions which obtain in his mouth.

When the chief, dental service, is of the opinion that a refund is in order he will prepare a brief of the facts in the case, attaching thereto copies of pertinent documents, and submit it to the finance officer with a recommendation that refund in a specified amount be effected, if possible.

(b) Dental prosthesis, such as bridges and dentures, furnished for treatment of a service-connected dental disease or injury, when lost, destroyed, or otherwise disposed of by a veteran, may be replaced upon the authority of the chief medical officer or his designate. The field station concerned will obtain affidavits of the veterans and, if possible, of other persons familiar with the circumstances of the loss, destruction, etc. The chief medical officer or his designate may require any other additional evidence considered necessary to show good faith and lack of carelessness on the part of the veteran, and may deny replacement if circumstances warrant.

(c) Dental prosthesis such as bridges and dentures furnished as adjunct or auxiliary relief, when requiring replacement through legitimate wear or deterioration, will be replaced upon determination as to the present necessity of replacement as adjunct or auxiliary relief.

(1) If the veteran applies for replacement, on an out-patient basis, of prosthesis previously furnished as adjunct treatment and cannot produce such prosthesis, the procedure as prescribed in paragraph (b) of this section will govern in determining eligibility thereto.

(2) If the prosthesis is indicated as adjunct or auxiliary treatment on an in-patient basis, the chief, dental service, will satisfy himself that the prosthesis previously furnished was not destroyed, lost or otherwise disposed of due to the carelessness or neglect of the beneficiary. If he is of the opinion that the loss was occasioned by the carelessness or neglect of the beneficiary, the decision as to replacement will be made by the chief medical officer or clinical director, as required in paragraph (b) of this section.

(d) Dental prosthesis, such as bridges and dentures furnished veterans receiving domiciliary care in a Veterans' Administration facility as Class IV (domiciliary) treatment, may be replaced when unserviceable through fair wear and deterioration. If veteran requests replacement of prosthesis previously furnished him by the Veterans' Administration and is unable to produce the prosthesis or presents same in a mutilated condition, the chief, dental service, will secure all evidence available and present it to the chief medical officer or clinical director for a determination as to whether the prosthesis was lost through the carelessness and neglect of the veteran or wilfully mutilated by him. If such determination is made, replacement will be made only upon payment of the cost of the prosthesis by the veteran either in cash, or by labor at the facility for which he will be credited at the rate of fifty cents per day. The cost of the appliance will be computed at twenty-five percent of the fee basis value shown in schedule of Fees—Dental, Veterans' Administration procedures.

(e) Dental prosthesis, such as bridges and dentures furnished vocational trainees, will be replaced in accordance with the same procedure as prescribed in paragraph (c) of this section and subject to the provisions of § 17.129 (e).

REIMBURSEMENT OR PAYMENT FOR EXPENSES OF UNAUTHORIZED MEDICAL SERVICES

§ 17.140 *Adjudication of claims.* (a) Claims for reimbursement or payment of expenses of medical services obtained without prior authorization of the Veterans' Administration as hereinafter comprehended, will be adjudicated in the office of the branch medical director except in cases under the jurisdiction of central office which will be adjudicated in the office of the chief medical director.

(b) Chief medical officers of regional offices and centers with regional office activities upon receiving such claims will be required to develop them as hereinafter instructed (§ 17.148 (a) and (b)), before forwarding them to the office of the branch medical director or the chief medical director, central office. Claims for services rendered in foreign countries will be developed in the out-patient administration division, central office.

(c) Claims not exceeding $500 in amount will be reviewed and approved or disapproved by the chief or assistant chief of the out-patient division of each branch office or by the chief or assistant chief of the out-patient administration division, office of the chief medical director, central office. If the claim exceeds $500 in amount the recommendation for approval will be submitted by the chief or assistant chief, out-patient division in the branch office, to the branch medical director or by the assistant medical director for auxiliary services, central office, to the chief medical director or his designate.

(d) Claims, as defined in § 17.141 will be subject to one review after an adverse decision, upon appeal to the Administrator. Appeals must be entered within one year from the date of notification to the claimant or his representative of the original adverse decision and the claimant or representative will be so advised. No claim that had been finally denied prior to March 20, 1933, will be reopened or reconsidered. A claim will be deemed to have been finally denied when (1) original adjudication or appellate action was taken adversely, and proper appeal was not entered prior to March 20, 1933, or within one year from the date on which the claimant was notified of the adverse action, whichever is the later date; or (2) when the claim was finally denied on appeal prior to March 20, 1933 (Public No. 307, 74th Congress). (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.141 *Classes of claims comprehended.* Claims for reimbursement of or payment for medical treatment (including the necessary travel incidental thereto) obtained without prior authorization from the Veterans' Administration, except as provided in paragraphs (d) and (e) of this section will be considered under the following conditions:

(a) The claim must be for treatment of a service-connected disease or injury only; or for the adjunct relief of an associated non-service-connected condition determined as aggravating the dis-

ability from the basic service-connected disorder.

(b) As to unauthorized treatment rendered prior to March 20, 1933, the claims will be limited to cases falling within the final proviso of section 202 (9), World War Veterans' Act, 1924, as amended, viz.: (1) The treatment must have been rendered in a medical emergency; (2) Government facilities must have been not feasibly available; (3) delay would have been hazardous; all of these three elements must have existed, and if any one was lacking reimbursement or payment will not be authorized; (4) claim must have been filed with the Veterans' Administration prior to March 20, 1933, as required by Public No. 307, 74th Congress, act of August 23, 1935.

(c) As to unauthorized treatment rendered subsequent to March 19, 1933, the eligibility criteria defined in paragraph (b) (1), (2), and (3) of this section will apply; and, in addition, it must be shown by a decision of an adjudicative agency that the disability from the disease or injury for which treatment had been rendered was service-connected, or determined by the medical officers designated in § 17.140 (c) as aggravating such service-connected disability.

(d) As to claims for reimbursement of or payment for medical treatment for a nonservice-connected disease or injury, rendered a beneficiary receiving vocational training under Public Law 16, 78th Congress, the eligibility criteria defined in paragraph (b) (1), (2), and (3) of this section will apply; and in addition it must be shown that the treatment was necessary to prevent interruption of training.

(e) As to claims for reimbursement of or payment for repairs of prosthetic appliances used by beneficiaries for treatment of a service-connected disability, or a nonservice-connected disability determined as aggravating the basic service-connected disability and for repairs of prosthetic appliances used and required by beneficiaries to prevent interruption of the pursuit of a course of training authorized under Public Law 16, 78th Congress, the following eligibility criteria in lieu of those defined in paragraph (b) (1), (2), and (3) of this section will apply:

(1) The repairs were secured from locally available sources.

(2) The cost of the repairs does not exceed $35.00.

(3) There is a showing that the repairs were necessary and that it was more expedient to have such repairs made through private arrangements.

Reimbursement or payment as herein provided will be made in the amount claimed unless determined unreasonable, in which event only a reasonable amount for the service rendered will be paid. Reimbursement or payment will not be made for expense incurred by a beneficiary for transportation. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.142 *Conditions controlling claims.* When the unauthorized treatment was rendered prior to June 7, 1924, no payment or reimbursement will be made for any period over which compensation had not been awarded for the service-connected disability. When the unauthorized treatment was rendered subsequent to June 7, 1924, payment or reimbursement, in accordance with the provisions of section 202 (9), World War Veterans' Act, 1924, as amended, may be allowed regardless of the compensability of the beneficiary's service-connected disability but in no case more than one year prior to the date of filing claim under section 210, World War Veterans' Act, 1924, as amended. (Comptroller General's Decision A–20304, Nov. 2, 1927.) (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.143 *Definitions.* (a) The term "beneficiary" as used in §§ 17.140 to 17.148 means:

(1) In claims for payment for or reimbursement of expenses incurred in procuring unauthorized treatment prior to March 20, 1933, any veteran of World War I, not dishonorably discharged, who after filing claim for disability compensation (application for which includes application for treatment) is determined by the Veterans' Administration to have had a service-connected disability entitling to treatment through the Veterans' Administration.

(2) As to claim for unauthorized treatment rendered subsequent to March 19, 1933, any veteran who at the time of such treatment was suffering from a service-connected disability.

(b) "Emergency," as used in §§ 17.140 to 17.148, means treatment of a condition which, in sound medical judgment, will not permit of delay without endangering the claimant's health or life.

(c) "No facilities are or were then feasibly available," as used in §§ 17.140 to 17.148, means that an attempt to use such facilities beforehand would not have been reasonably sound, wise or practicable, or that treatment had been or would have been denied. In applying this definition, the distance from a Veterans' Administration center; the location of the patient; the sex and color; the nature and degree of his disability; the available means of transportation; the season and weather conditions then prevailing; the type of medical personnel or equipment requisite; and the time the services were rendered, are elements to be given consideration.

(d) "Delay would be or would have been hazardous," as used in §§ 17.140 to 17.148, means the risk of possible disastrous consequences attendant upon an endeavor by the claimant to secure treatment through governmental agencies, under any or all circumstances. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.144 *Adjunct treatment.* Reimbursement of or payment for adjunct treatment (see § 17.141 (a) and (c)) will be allowed only when such treatment was rendered in an emergency. For such adjunct treatment rendered prior to June 7, 1924, no payment or reimbursement will be made for any period over which compensation had not been awarded for the basic service-connected disease or injury. For adjunct treatment rendered subsequent to June 7, 1924, and where claim was filed prior to March 20, 1933, payment or reimbursement therefor may be allowed regardless of the compensability of the beneficiary's basic service-connected disease or injury, but in no case more than one year prior to the date of filing claim under section 210 of the World War Veterans' Act, 1924, as amended (Public No. 307, 74th Cong.). For adjunct treatment rendered subsequent to March 19, 1933, payment or reimbursement may be allowed regardless of the compensability of the beneficiary's basic service-connected disease or injury. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.145 *Statement to support claims*—(a) *Nursing services.* To support a claim for unauthorized medical service when a nurse had been employed, a statement will be required from the attending physician showing necessity for such nurse, and whether she was a registered graduate or a so-called "practical nurse." When for any good reason, it is not practicable to procure such statements and in the judgment of the physician reviewing the claim as prescribed in § 17.140 (c) the need for a nurse is sufficiently established, the latter may so certify. Payment for service of a "practical nurse" will be allowed only in the exceptional cases wherein a registered graduate nurse could not be engaged.

(b) *Room and board.* Where in claims for services rendered prior to May 15, 1947, the fee charged for room and board exceeds $3 per diem, the excess will not be allowed unless there is submitted a statement from the attending physician or superintendent of the hospital concerned that the veteran's condition demanded the use of a semi-private or private room, or in the judgment of the reviewing physician the necessity therefor is sufficiently established by the evidence of record, in which event fees of $4.00 and $5.00, respectively, may be allowed. However, this provision will not prohibit approval of a fee exceeding $5.00 in exceptional and meritorious cases.

(c) *Visits made outside of a city or town.* All claims involving additional fees for visits made outside of a town or city limits prior to May 15, 1947, should show the time consumed by the physician in actual travel as required by the Schedule of Fees, Veterans' Administration, medical procedures in effect at the time such services were rendered.

(d) *Prescriptions, drugs and laboratory services.* When reimbursement is claimed for prescriptions, copies of the prescriptions must be supplied, or in lieu thereof, when it is impossible to obtain the prescriptions, an itemized statement from the druggist showing the kind and quantity of medicines furnished may be accepted. All bills for drugs and laboratory services must be fully itemized. No lump sum charges are allowable. (Ch. 616, 49 Stat. 724; 38 U..S. C. 483a)

§ 17.146 *Allowable fees.* (a) In the adjudication of claims for unauthorized medical treatment rendered prior to May 15, 1947, the Schedule of Fees, Veterans' Administration, medical procedures will govern as to allowance for items except as provided in § 17.141 (e). If the schedule of fees in effect at the time the treatment was rendered did not provide a fee for the particular service, the schedule in effect at the time the claim is being considered will be applied. If the par-

ticular service is not covered by the schedule in effect, a fee not in excess of what is reasonable and customarily charged in the community concerned, may be allowed.

(b) In the adjudication of claims for unauthorized medical treatment rendered subsequent to May 15, 1947, fees charged for services may be allowed provided they are considered reasonable and not in excess of those customarily charged the general public for similar services in the locality where rendered. Claims for accommodations in a semi-private or private room must be supported by a statement from the attending physician or superintendent of the hospital concerned that the veteran's condition demanded the use of a private or semi-private room, unless in the judgment of the reviewing physician the necessity therefor is established by the evidence of record. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.147 *Treatment not dependent upon preference of a patient.* No reimbursement or payment of unauthorized medical treatment will be made when procured by a claimant through private sources in preference to available government facilities. (Decisions Comptroller General, Jan. 31, 1924.) No payment or reimbursement will be made for any unauthorized medical service (including incident necessary travel) under conditions other than specified in §§ 17.140 to 17.148. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

§ 17.148 *Development of claims.* (a) Guided by the controlling provisions of §§ 17.140 to 17.147, inclusive, the chief, out-patient administration division, central office; the chief medical officer, regional offices and the physician in charge of regional office medical activities at centers or their physician designate will advise claimants whether they have or have not prima facie eligibility to reimbursement or payment of unauthorized medical expenses. If the claim is patently inadmissible (e. g., if made for treatment of a nonservice-connected disability, etc.) the claimant will be so advised and the claim will not be developed. But if the basic facts indicate prima facie eligibility, the employees aforementioned will instruct the claimant as to the submission of VA Form 10–583, if not originally filed and all the supporting exhibits. After these have been checked as satisfactory they will be forwarded with the claimant's files (claims and medical treatment) to the branch office of jurisdiction or to central office if it has been determined that the case is under the jurisdiction of that office, for adjudication. In claims comprehended under § 17.141 (e), a résumé of the pertinent evidence of record will suffice in lieu of the files.

(b) Formal application for reimbursement or payment of unauthorized medical services will be made on VA Form 10–583, Claim for Cost of Unauthorized Medical services. This form will be executed by each creditor who has rendered service for which payment has not been received; or by each person who has paid, from his personal funds, the cost of the unauthorized medical treatment. The claim must be supported by completely itemized bills or statements of account. When a claim is presented by a creditor, it is further required that a statement be supplied, signed by the patient or his representative, certifying to the amounts due and unpaid.

(c) All claims other than those patently inadmissible will be briefed by the claims examiner (medical) in central office and branch offices prior to their submittal, with supporting exhibits and the beneficiaries' files to the employees defined in § 17.140 (c) for approval or disapproval. The brief will contain a complete description of the claim, all pertinent facts explanatory of the data required in Veterans' Administration Form 10–608, Public Voucher, and an explanation of the audit of the amounts claimed and amounts allowable.

(d) Upon approval of claims an award will be prepared on adjudication VA Form 10–608, Public Voucher, in quadruplicate. The original VA Form 10–608 will be signed in the spaces provided by the claims examiner (medical) as "medical claims adjudicator" and the employee designated in § 17.140 (c) acting in the capacity of medical claims authorizer. The original (VA Form 10–608) and two copies (VA Form 10–608a) will be forwarded to the branch director of finance service for certification for payment in branch office cases or to the office of the assistant administrator for finance if central office has jurisdiction. In view of such certification surety bonds will not be required for medical claims authorizers. The remaining copy (VA Form 10–608a), VA Form 10–583, the approved brief of facts, all bills, supporting exhibits and correspondence will be filed in the case file. The payee and all interested persons will be fully informed of the action taken.

(e) In problem or doubtful claims the advice of the chief medical director may be solicited by the submission of a brief of the pertinent facts, and a concise statement of the question at issue. (Ch. 616, 49 Stat. 724; 38 U. S. C. 483a)

PART 19—BOARD OF VETERAN'S APPEALS

JURISDICTION

Sec.

AUTHORITY: §§ 19.0 to 19.7 issued under 48 Stat. 8; 38 U. S. C. 701: interpret sec. 9, 48 Stat. 10, sec. 20, 48 Stat. 309, sec. 28, 48 Stat. 524; 38 U. S. C. 709, 722.

JURISICTION

§ 19.0 *General appellate jurisdiction.* All questions on claims involving benefits under the laws administered by the Veterans' Administration shall be subject to one review on appeal to the Administrator of Veterans' Affairs, decisions in such cases to be made by the board of veterans' appeals. Jurisdiction to render final decisions on questions so reviewed on appeal is vested in the board of veterans' appeals, in accordance with part II, Veterans' Regulation No. 2 (a) (38 U. S. C., ch. 12).

§ 19.1 *Subject matter of appeals.* More specifically, the board's appellate jurisdiction covers questions of entitlement to compensation and pension for service-connected disabilities; pension for disability without regard to service-connection; death compensation and pension; vocational rehabilitation, including need therefor; education; insurance, including maturity of contracts, waiver of premiums, and legal beneficiary; reimbursement for unauthorized medical expenses; burial allowances; disability suffered as the result of examination or hospitalization or incident to vocational training; emergency officers retirement benefits; basic eligibility to loans and readjustment allowances; adjusted compensation; waiver or recovery of compensation overpayments; forfeiture of rights; and all related mixed questions of fact and law such as character and type of service, attorney fees, marital relations, dependency, validity of claims, division of pension, apportionment, reduction and increase in compensation or pension benefits, and similar questions.

§ 19.2 *Time within which appeals must be filed.* Applications for review on appeal to the Administrator of Veterans' Affairs shall be filed within 1 year from the date of mailing notification of the result of initial review or determination except in simultaneously contested claims where one is allowed and one rejected, in which event the time allowed for filing an application for review on appeal shall be 60 days from date of mailing notice of the original action to the claimant to whom the action is adverse. In such cases, the activity concerned will promptly notify all parties in interest of the original action taken specifying the time limit in which appeals may be filed.

§ 19.3 *Right to a hearing.* A claimant who has executed a formal appeal to the Administrator and whose appeal has been certified by the office of original jurisdiction shall be entitled to appear without expense to the Government at a formal hearing before a section of the board of veterans' appeals or, at his discretion, before a rating board acting as a hearing agent for the board of veterans' appeals, with such witnesses, recognized attorneys, or representatives as he may designate.

§ 19.4 *Form of decision.* Decisions of the board will be in written form setting forth specifically the question considered by the board, the essential facts and the reasons for the board's decision.

§ 19.05 *Finality of decisions of the board of veterans' appeals.* The board's determinations are final except for the correction of error therein or when, in the opinion of the board, a contrary conclusion is justified on the basis of additional official information furnished by the Departments of the Army or Navy. Decisions of the board of veterans' appeals made while a section of the board is sitting in a branch office or regional

office shall have the same effect as those rendered by the board in Washington. However, when a claim has been finally disallowed by the board, a subsequent claim on the same factual basis, if supported by new and material evidence, shall have the attributes of a new claim.

§ 19.06 *Jurisdiction to correct errors.* The board of veterans' appeals has authority to correct errors in any question in issue. If the board finds a clear and unmistakable error on any question not in issue, such error will be brought to the attention of the proper service by a memorandum from the chairman of the board. The failure so to do may not be taken as a certification or decision by the board that error does not exist in any previous determination of a question involved in a claim unless such question is specifically in issue.

§ 19.07 *Administrative appeals; employees authorized to file appeals.* Pursuant to the authority contained in paragraph VI, Part II, Veterans' Regulation No. 2 (a), an assistant administrator, the solicitor, or a deputy administrator is hereby authorized to file an appeal from any decision within 1 year from the date of such decision, or within 1 year from the date of mailing of notice of such decision, whichever is the later date. The directors of the various services and chiefs of divisions of the central office, and the directors of the corresponding services of the branch offices, and the chief, veterans' claims division, the chief, dependents and beneficiaries claims division, claims service, and the chief, disability insurance claims division, insurance service, branch office, are authorized to file an appeal from any decision originating within their established jurisdiction within 6 months of the date of such decision or within 6 months from the date of mailing of notice of such decision, whichever is the later date. The manager of a regional office, the adjudication officer, and the chief, vocational rehabilitation and education division, are authorized to file an appeal from any decision within 60 days from the date of such decision or within 60 days from the date of mailing of notice of such decision, whichever is the later date.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

SUBPART A—REGISTRATION AND RESEARCH

JURISDICTION, APPLICATIONS AND APPEALS

SERVICE REQUIREMENTS

ELIGIBILITY UNDER PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

ELIGIBILITY UNDER PART VII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

ENTITLEMENT UNDER PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

DOMESTIC RELATIONS DETERMINATIONS

APPORTIONMENT OF SUBSISTENCE ALLOWANCE

AUTHORIZATION OF SUBSISTENCE ALLOWANCE UNDER PART VIII, VETERANS' REGULATION NO. 1 (A), AS AMENDED (38 U. S. C. CH. 12)

AUTHORIZATION OF SUBSISTENCE ALLOWANCE UNDER PART VII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

SUBPART B—EDUCATION AND TRAINING

EDUCATION AND TRAINING UNDER PART VII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

The Course of Vocational Rehabilitation

Selecting the Training Facility

The Individual Training Program

Inducting the Veteran Into Training

Furnishing Supplies

Supervision of the Individual Trainee

AUTHORITY: §§ 21.1 to 21.735 issued under secs. 1, 2, 46 Stat. 1016, 57 Stat. 43, secs. 300, 1500, 1501, 1502, 1503, Title II, 58 Stat. 286, 287, 291, 300, 301, secs. 5, 6, 7, 10, 11 (a), 59 Stat. 542, 624, 626, 631, secs. 1, 2, 3, 60 Stat. 124, 934; 38 U. S. C. 11, 11a, 693g, 697, 697a, b, c, f, g, 701, ch. 12 notes, secs. 1, 2, 3, Public Laws 115, 239, 338, 377, 411, 512, 80th Congress.

SUBPART A—REGISTRATION AND RESEARCH

JURISDICTION, APPLICATIONS AND APPEALS

§ 21.0 *Jurisdiction of registration and research service.* (a) The registration and research activity in the field offices, in all cases except those properly within the jurisdiction of the central office (see paragraph b of this section), shall be the agency of original jurisdiction with complete responsibility for determinations of basic eligibility and entitlement to education or training and authorization of subsistence allowance payments under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12) including cases involving military or naval service with the Canadian Government. The registration and research activity in the field office shall also be responsible for authorizations of subsistence allowance payments under Part VII, Veterans' Regulation 1 (a), as amended.

(b) Registration and research service, central office, shall be the agency of original jurisdiction with complete responsibility for determinations in the following cases:

(1) Veterans who served with the military or naval forces of a government allied with the United States in World War II (except Canadian service which is under the jurisdiction of the field offices).

(2) Veterans pursuing education or training under Part VIII in institutions located in foreign countries.

(3) Veterans resident outside the continental limits of the United States pursuing correspondence courses with institutions located within the United States.

(4) Veterans who are Philippine Nationals residing in the United States and who served in the Army of the Philippine Commonwealth, the Philippine Scouts, the Philippine Scouts enlisted under section 14, Public Law 190, 79th Congress (enlisted men and commissioned officers), and all Philippine guerrillas. (Cases involving Philippine Nationals who served in the military or naval forces of the United States shall be handled in the field offices.) (See § 21.15 (f).)

(5) Veterans residing in United States Territories and possessions not under the jurisdiction of any regional office.

(c) All actions having to do with applications and determinations of eligibility and entitlement to vocational rehabilitation or education or training on the part of veterans who are employees of the Veterans' Administration will be taken by the respective field offices and authorizations of subsistence allowance, original and supplemental, will be effected in the field office in the same manner as in cases of other applicants for these benefits, with the same principles and procedures governing.

(d) The registration officer will be responsible as authorizing officer and will execute all Certificates of Eligibility and Entitlement and all original and amended authorizations of subsistence allowance over his signature.

§ 21.1 *Finality of action.* (a) The decision of a duly constituted registration and research activity of original jurisdiction as to an issue properly within its jurisdiction will be final and binding upon all field offices of the Veterans' Administration and is not subject to revision on the same evidence except by duly constituted appellate authority or as provided hereinafter. A determination by a registration and research activity of original jurisdiction will not be reversed or amended by the same or any other vocational rehabilitation and education agency of original jurisdiction except where such reversal or amendment is clearly warranted by a change in law or by specific change in interpretation thereof formally provided in a Veterans' Administration issue; except that such a reversal or amendment may be made by a vocational rehabilitation and education agency of original jurisdiction where it is obviously warranted by a clear and unmistakable error, as defined below, shown by the evidence in file at the time the prior decision was rendered, and in any such case there shall be placed in the record a signed statement by the responsible staff official definitely fixing the responsibility for the determination found to be erroneous.

(b) When a revision or amendment of a prior decision is deemed justified as a matter of opinion or judgment upon the facts of record at the time the questioned decision was rendered, the complete file will be forwarded to the director, vocational rehabilitation and education service, branch office, accompanied by a complete and comprehensive statement of the facts in the case and justification of the conclusion that revision of the prior decision is in order. Differences of opinion involving original agencies in different branch areas will be submitted by the director, vocational rehabilitation and education, branch office, to the director, registration and research service, central office, for resolution. Such references will in every case be made without any action toward amendment or revision of the questioned decision.

(c) "Error" means error of fact of law, predicated clearly and unmistakably upon the evidence which was of record when the questioned action was taken. It does not mean mere difference of opinion or judgment.

§ 21.2 *Application for a course of education or training.* Applications for education or training under Part VIII, Veterans Regulation 1 (a), as amended, (38 U. S. C. ch. 12), shall be made by submitting a properly executed VA Form 7–1950, Veterans' Application for a Course of Education or Training. The original, a certified copy, or a photostatic copy of the appropriate discharge document should be submitted with VA Form 7–1950. The receipt of VA Form 7–1950 in the Veterans' Administration is a prerequisite to the determination of eligibility and entitlement under this title, and in no instance will any action to authorize payment of subsistence allowance be completed prior to the filing of the formal application.

(a) If an application is not complete at the time of the original submission, the veteran will be notified of the evidence necessary to complete the application, and, if such evidence is not received within 1 year from the date of request therefor, benefits may not be paid by virtue of the application. (See 38 U. S. C., ch. 12, Reg. 2 (d), Part 1, par. 1 (2), Public No. 2, 73d Cong.)

(b) Any communication from or action by a claimant or his duly authorized representative which clearly indicates an intent to apply for benefits under this title may be considered an informal application thereunder if followed promptly by a formal application, VA Form 7–1950, properly executed. (§ 3.27 of this chapter defines informal claims generally; see also § 3.28 of this chapter.)

(c) The act of a veteran in enrolling in an approved institution does not, in itself, constitute an informal application, since there is no authority whereby the Veterans' Administration may impute to a veteran an intention to become a beneficiary under the statute, merely because of his enrollment. There must be a clear and established action upon his part or a communication, identifiable in the record, showing an intention to claim education or training before it may be held that an informal application has been established. In addition, a valid informal application must be followed promptly by a formal application.

(d) The institution by receiving an application is acting as agent of the Veterans' Administration solely for the purpose of transmitting it to the Veterans' Administration office of jurisdiction. Therefore, the Veterans' Administration will accept the date the application was received by the institution provided it is transmitted to and received by the Veterans' Administration within a period of 30 days. Otherwise, the date of receipt by the Veterans' Administration will be the governing date. Payments of monetary benefits are contingent upon an official finding as to eligibility in every case.

(e) If a formal application is not presented prior to cessation of a course, benefits shall not be allowed by virtue of such course without regard to any question of the prior existence of an informal application. Benefits shall be allowed only for the course pursued in the period immediately preceding the date of receipt of a formal application and then only if a valid informal application is established to cover the course.

§ 21.3 *Application for change of course and/or change of institution.* Whenever the veteran requests a change

of course and/or change of institution which requires prior approval by the Veterans' Administration, the effective date of the veteran's new status will be the date the veteran's request for change was received by the Veterans' Administration, or the date his course or institution was changed, whichever is later.

§ 21.4 *Appeals.* Questions involving determinations made in registration and research as to rights and benefits to education or training will be subject to review on appeal to the Administrator of Veterans' Affairs, and a letter of notification to the veteran will advise him of this right and of the time limit in which an appeal must be filed. Appeals from vocational rehabilitation and education determinations will be handled as to reception, development, certification, recording, and forwarding in exact accordance with published Veterans' Administration regulations and instructions governing appeal matters.

SERVICE REQUIREMENTS

§ 21.15 *Active service, what constitutes.* The veteran must have served in the active military or naval service on or after September 16, 1940, and prior to July 26, 1947, or prior to the termination of the first enlistment or re-enlistment under section 11 (a), Public Law 190, 79th Congress, including enlistments extended within the period October 6, 1945, to October 5, 1946, inclusive. As to the Navy (including the Marine Corps), an extension of such an enlistment occurring after October 6, 1946, does not extend the end of the war for the purposes of section 11 (a), Public Law 190, 79th Congress, but as to the Army, in the case of such an extension to a 3-year enlistment, whether before or after October 6, 1946, the termination of the war for the purpose of section 11 (a), Public Law 190, 79th Congress, will be the date of discharge or release from active duty in such enlistment (38 U. S. C. ch. 12, Reg. 1 (a), Part 8, par. 1).

(a) *Determinations of active service.* The determination of what constitutes active military or naval service for the purposes of Part VIII, will be governed by the principles set out in §§ 3.59 and 3.60 of this chapter insofar as they are applicable, bearing in mind that although a particular service status may confer rights to disability pension or compensation, it may not necessarily meet the active service requirements of Part VIII for eligibility to education or training.

(b) *WAC.* The Women's Army Corps was established on July 1, 1943, as a component of the Army. All periods of active service in the WAC prior to the termination of the war are to be included in determining eligibility and entitlement under Part VIII. Service in the Women's Army Auxiliary Corps may not be included in such determinations.

(c) *WAVES, WR of Marine Corps, and SPARS.* The Women's Reserve of the Naval Reserve, the Women's Reserve of the Marine Corps Reserve, and the Women's Reserve of the Coast Guard Reserve from their activation dates were established as branches or components of the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve, respectively. All periods of active service in these women's branches or components of the armed forces of the United States, prior to the termination of the war, are to be included in determining eligibility and entitlement.

(d) *Commissioned officers of the Public Health Service.* See § 3.1 (e) of this chapter for criteria as to active service for these persons.

(e) *Commissioned officers of the Coast and Geodetic Survey.* See § 3.1 (o) of this chapter for criteria as to active service for these persons.

(f) *Philippine Scouts, Philippine Guerrillas, and other Philippine Nationals.* For general study with reference to service by Philippine Scouts, guerrillas, and other nationals, see § 3.1 (c) of this chapter.

(1) Philippine Scouts, except those having enlisted pursuant to section 14, Public Law 190, 79th Congress, are in a service which is a component part of the United States Army, and veterans of this service are American veterans for all purposes, regardless of their nationality or citizenship, and as such they are not restricted in the matter of rights and benefits but are entitled to all rights and benefits provided to the same extent as other American veterans. This includes education and training under Part VIII.

(2) Philippine Scouts enlisted under section 14, Public Law 190, 79th Congress, are eligible only for the benefits specified in the enabling act. Education or training under Part VIII, as amended, was not included among these benefits.

(3) Members of the Organized Military Forces of the Government of the Commonwealth of the Philippines who were placed in the service of the armed forces of the United States pursuant to and in compliance with the military order of the President of the United States dated July 26, 1941, are eligible only for the benefits specified in Public Law 301, 79th Congress, February 18, 1946. Education and training under Part VIII, as amended, was not included among those benefits.

(g) *Service with Allied Military Governments (section 1506, Public Law 346, 78th Congress, as amended).* Questions concerning asserted service in other governments for the purpose of this legislation (except Canadian cases) should be submitted to registration and research service, central office, for determination.

(h) *Reserve training.* Members of the organized reserve who were called into active duty status for a period of 30 days or more on or before July 25, 1947, the official termination of World War II, may, by such service, have established basic eligibility and/or increased their period of entitlement. If the call for such service was for less than 30 consecutive days duration, such duty is training duty and not active service for the purpose of Part VII or Part VIII, as amended.

§ 21.16 *Service which does not constitute active service.* The Congress has generally restricted veterans' benefits to persons who were in active service in the military or naval establishments, consistently adhering to the principle of not granting the same relief or benefits to civilians as are provided for persons who have been in the active military or naval service. In the paragraphs below are listed examples of persons whose services were not active service within the meaning of the law. This listing is not exclusive.

(a) *WAAC.* Service in the Women's Army Auxiliary Corps may not be included in determining the period of active military service.

(b) *Temporary members of the Coast Guard Reserve.* Service as a temporary member of the Coast Guard Reserve is not active military or naval service within the meaning of Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), and, therefore, such service does not confer entitlement to educational or training benefits. (See § 3.1 (r) of this chapter.)

(c) *American Field Service.* Members of the American Field Service served with but not in the armed forces and were auxiliary units, quasi-military in character.

(d) *Women's Auxiliary Service pilots, etc.* Women's Auxiliary Service pilots, civilians serving in the Army transports, civilian pilots of the Air Transport Command, civilian instructors of the Air Forces, war correspondents, members of the United States Merchant Marine Service, Army Specialists' Corps, the Civilian Air Patrol, Women's Air Service pilots, and certain Red Cross personnel, served with but not in the armed forces. Therefore, such service does not qualify as active service.

(e) *OSS.* Office of Strategic Services personnel, unless members of the military or naval service, served with but not in the armed forces.

(f) *Rejected draftees.* Rejected draftees had no active service.

§ 21.17 *Discharge or release.* The person must have been discharged or released from active military or naval service under conditions other than dishonorable. (Exception: persons on terminal leave or being hospitalized pending final discharge, including persons ordered to their homes to await disposition by retirement boards.)

(a) *Personnel awaiting retirement.* An officer or enlisted man hospitalized with a view to retirement, who is ordered to his home to await disposition by a retirement board, is encompassed by section 1507, Public Law 346, 78th Congress (added by Pub. Law 268, 79th Cong.), and if otherwise eligible is entitled to all the benefits provided by section 1507 of that act.

(b) *Fleet reserve members.* Persons released from active service and in receipt of retainer pay, if otherwise eligible, are entitled to education or training under Part VIII, Veterans Regulation 1 (a), as amended, (38 U. S. C. ch. 12).

(c) *Two or more discharges.* Veterans having had two or more periods of war service, one of which terminated under dishonorable conditions will be entitled only to credit for that period of active service which terminated in a discharge under other than dishonorable conditions.

(d) *Underage enlistments.* Veterans whose enlistments were canceled because the enlistees were under age are entitled to eligibility credit for active service in such an enlistment.

(e) *Persons re-enlisted in armed forces.* Any person who meets the eligibility requirements for the benefits provided by Part VIII may assert a claim therefor, and entitlement will not be barred because such person has re-entered the active military or naval service. Active service credit will continue to accrue after re-entry into service until July 26, 1947, or until expiration of the individual's enlistment or re-enlistment if contracted under the conditions specified in section 11 (a), Public Law 190, 79th Congress. However, this additional service may not be included in computation of entitlement until it has been terminated discharge or release from active service under conditions other than dishonorable or by the attainment of a status as specified in section 1507, Public Law 346, 78th Congress (added by Pub. Law 268, 79th Cong.).

(f) *Discharge for purpose of changing status.* A discharge during service on or after September 16, 1940, and prior to July 26, 1947, which did not interrupt the performance of active service but was for the purpose of accepting a commission, appointment as a warrant officer or for any other change of status will not meet the requirements of Part VIII for a "discharge or release from active service" unless at the time of such discharge or release for change in status the person involved was eligible for release under the point system, length of service system, or any other criteria then in effect. If the veteran was not eligible for release, the entire active service will be held to constitute one period of service, and eligibility for education and training may not be established until the final discharge occurs. It is pointed out that the governing principle is whether the person was, at the time the change in status occurred, otherwise eligible for actual discharge or release from active service and was so discharged or released. In all cases of this type, the veteran must present a discharge or other certificate evidencing separation from the service.

(g) *Character of discharge changed by board of review.* Discharge under other than honorable conditions followed by an honorable discharge pursuant to the findings of a board of review under authority of section 301, Public Law 346, 78th Congress, confers basic eligibility if other statutory criteria are satisfied.

(h) *General statement on conditions of separation from service.* (See secs. 300 and 1503, Pub. Law 346, 78th Cong.). Under section 300, benefits under any laws administered by the Veterans' Administration are barred for any period of service from which a person is discharged or dismissed by reason of the sentence of a general court martial, or is discharged on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or in the case of an officer where his resignation is accepted for the good of the service. Further, under section 1503, benefits under Public Law 2 and Public Law 346, are barred where the person was discharged under dishonorable conditions. The requirement of the words "dishonorable conditions" will be deemed to have been met when it is shown that the discharge or separation from active military or naval service was (1) for mutiny, (2) spying, or (3) for an offense involving moral turpitude or wilful and persistent misconduct: *Provided, however,* That where service was otherwise honest, faithful, and meritorious, a discharge or separation other than dishonorable because of the commission of a minor offense will not be deemed to constitute discharge or separation under dishonorable conditions. (See in addition § 3.64 (c) and (d) of this chapter.)

ELIGIBILITY UNDER PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

§ 21.30 *Conditions.* Any veteran of World War II is eligible for a course of education or training in an approved educational or training institution for a period of 1 year plus time spent in active military or naval service not to exceed a total of four calendar years, providing the following conditions prevail:

(a) That the person served in the active military or naval service on or after September 16, 1940, and prior to July 25, 1947 (except in cases properly within the exceptional provisions of sec. 11 (a) Pub. Law 190, 79th Cong.).

(b) That the person has been discharged or released from active military or naval service under conditions other than dishonorable (except persons who are hospitalized pending final discharge or release from active military or naval service or who have been placed in a terminal leave status).

(c) That the person shall have served 90 days or more, exclusive of any period he was assigned for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of his civilian course and was pursued to completion (see § 21.33 (c)) or the time he was assigned as a cadet or midshipman at one of the service academies (see § 21.33 (b)), or, if less than 90 days, that he shall have been discharged or released from active service by reason of an actual service-incurred injury or disability. (This last provision requires determination of service incurrence without applying presumptive provisions of Public No. 2, 73d Cong., as amended.)

(d) That the person makes application for and initiates the course of education or training before July 26, 1951, or within 4 years from the date of his first discharge after July 25, 1947.

§ 21.31 *Basic evidence.* Eligibility for education or training and the extent of entitlement shall be predicated upon the best available evidence of official character.

(a) *Length and character of military service.* The length and character of military service shall be determined on the basis of official evidence from the appropriate service department which may be:

(1) Copy of veteran's discharge certificate or release from active duty as furnished regularly by the service department at the time of the service person's discharge or release from the active service or as furnished by the veteran at the time the application is filed.

(2) A certified copy or photostatic copy of discharge or release from active duty as submitted by the claimant with his application for benefits.

(3) An official report from the service department received in response to an appropriate request on VA Form 3101 series.

(4) Copy of applicant's terminal leave orders which reflect at least 8 days of terminal leave, the exact date of expiration of terminal leave, and the date he is to be discharged. (Cases under sec. 1507, title VI, Pub. Law 346, 78th Cong., as amended by sec. 10, Pub. Law 268, 79th Cong.)

(5) A statement from the proper official of the station or hospital in which an applicant is receiving treatment pending final discharge (sec. 1507 cases). This statement will reflect at least the applicant's date of entry into active service and the probable date of his discharge.

(6) An original, certified, or a photostatic copy of the orders authorizing an applicant to leave a station or hospital and to proceed to his home in order to await action by a retirement board (sec. 1507 cases).

(7) The eligibility and extent of entitlement of a veteran who served with the military or naval forces of an Allied Government will be determined on the basis of the facts shown (cases under sec. 1506, title VI, Pub. Law 346, 78th Cong., as amended by sec. 10, Pub. Law 268, 79th Cong.). Such shall include an affidavit stating (i) the applicant was a citizen of the United States at the time of enlistment in the allied service, (ii) that he was a resident of the United States at the time of filing application, and (iii) that he has not applied for and received the same or similar educational benefits from the Allied Government with which he served during World War II.

(b) *Questionable discharges.* In all cases where the discharge is neither honorable nor dishonorable and it is not clear whether the circumstances under which the veteran was discharged or released from active duty under other than honorable conditions might bar eligibility to education or training, the cases will be referred by memorandum to the adjudication division, field office, or claims division, veterans' claims service, central office, for appropriate certification prior to initiating further action toward the issuance of Certificate of Eligibility and Entitlement to education or training. (See secs. 300 and 1503, Pub. Law 346, 78th Cong.)

(c) *Discharges for disability.* When an application for education or training is received and the veteran had fewer than 90 days' service within the purview of Part VIII, Veterans' Regulations 1 (a), as amended, (38 U. S. C. ch. 12), but was discharged for disability, the vocational rehabilitation and education activity will refer the claim to the adjudication division (field office cases) or the claims

division, veterans' claims service (central office cases) for development of disability service data and a formal memorandum rating as to whether such discharge was by reason of an actual service-incurred injury or disability.

§ 21.32 *Ninety days or more required service.* The 90 days or more active service requirement will be met if the 90-day period of service extends into or beyond the period September 16, 1940, to July 26, 1947. There must be 90 days continuous active service so extending, but the requirements as to active service for a total of 90 days or more may be satisfied by two or more periods of service. If a person had two or more periods of active service, a part of each of which was within the statutory wartime period, all such service may be counted in combination for credit toward the 90-day requirement. When the 90-day requirement has been met, entitlement to education or training will be based only upon the extent of active service on or after September 16, 1940, and prior to July 26, 1947 (except for enlistees properly within the exceptional provisions of sec. 11 (a), Pub. Law 190, 79th Cong.).

§ 21.33 *Required deductions from active service credit*—(a) *Periods for which pay was forfeited for any disciplinary reasons.* In the computation of service under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), there shall be excluded periods of agricultural, industrial, or indefinite furlough; time under arrest, in the absence of acquittal; time for which the soldier or sailor was determined to have forfeited pay by reason of absence without leave, and time spent in desertion or while undergoing sentence of court martial. Time lost through intemperate use of drugs or alcoholic liquor or through disease or injury the result of person's own misconduct shall not be excluded in such computation.

(b) *Cadet or midshipman.* The time spent as a cadet or midshipman at one of the service academies (U. S. Military Academy, West Point, New York; U. S. Naval Academy, Annapolis, Maryland; U. S. Coast Guard Academy, New London, Connecticut).

(c) *ASTP or NCTP.* In considering the application of the statute regarding the exclusion of periods of assignment for courses of education or training under the Army Specialized Training Program or the Navy College Training Program, determinations will be made in the individual cases in accordance with the following principles:

(1) *Continuation of his civilian course.* (i) Any course in the ASTP or the NCTP (V–12) which was a continuation of the civilian course of education of a trainee prior to his entrance into the active service will meet the statutory definition "continuation of his civilian course." If the course in the ASTP or NCTP (V–12) was not in fact a continuation of the civilian course of the trainee but presented deviations therefrom by reason of the requirements of the service department, the rule is not for application and exclusion of the period represented by such course is not in order. However, a deviation from the civilian course shall not be considered to have occurred unless the ultimate educational objective was changed; that is, deviation merely by reason of acceleration of a course, or by inclusion of certain elective subjects, or other minor curricular changes for whatever purpose will not remove the course from the definition "continuation of his civilian course" so long as the general educational objective is not altered or changed.

(ii) The definition "continuation of his civilian course" shall have been met when education or training under the ASTP or NCTP (V–12) was applied for upon volition by the service person. In the absence of a showing to the contrary, there is a prima facie presumption that education or training under the ASTP and the NCTP (V–12) was upon application of the service person and the burden of proof for overcoming this presumption will be upon the applicant if he contends that such education or training was not voluntarily applied for. However, even where such presumption is overcome by the applicant, his case will still be subject to consideration under subdivision (i) of this subparagraph as to whether the course was a continuation of his civilian course. (Attention is invited to the general directive issued personally by General Marshall in the spring of 1943, necessitating army-wide screening of personnel in continental United States for transfer to the ASTP as an assigned military duty. This may be considered for evidential development when indicated in the individual case.)

(2) *And was pursued to completion*—(i) *Completion of curriculum to which assigned.* A course in either of the service programs was pursued to completion upon substantial fulfillment of the immediate educational objective, that is the completion of the terminal (or last) term of the curriculum of the civilian course. For example, a premedical course will have been pursued to completion upon completion of the final (5th) semester or term of the course approved during the war for admittance to a course in medicine. A course in medicine will have been completed upon the completion of the academic work required for an MD degree. A course in engineering will have been completed upon the completion of the final term of academic work ordinarily required for the granting of the first baccalaureate degree.

(ii) *Election of option to continue course as civilian.* Where any course in the ASTP or NCTP (V–12) was terminated on election of the service person to be separated from the active service as a result of an offered option, to continue his course of education as a civilian, the case is within the definition "and was pursued to completion."

(3) *Not pursued to completion.* A course in the ASTP or NCTP (V–12) will not be held to have been "pursued to completion" for the purposes of this act when in any case the course was terminated under the following conditions:

(i) *Curtailment of ASTP, March and April 1944.* Separated from the ASTP as the result of the curtailment of the program during the period March and April 1944, prior to completion of curriculum assigned.

(ii) *Termination of training for reasons other than specified in subparagraph (2) (i) and (ii) of this paragraph.* All cases of termination of education or training under ASTP or NCTP (V–12) prior to completion of the scheduled curriculum established by the ASTP or the NCTP under any conditions other than those specified in subparagraphs (2) (i) and (2) (ii) of this paragraph (even where such training was within the definition "continuation of his civilian course" as defined in the foregoing). For example:

(*a*) Subdivisions (i) and (ii) of this subparagraph would apply to a considerable number of ASTP trainees separated from the program in March and April 1944 for assignment to regular enlisted service and would also apply to another large group separated from the program at the end of 1945, when the ASTP engineering curriculum was terminated, and trainees were assigned to military duties prior to completion of the scheduled curriculum to another group separated from the service on termination of the Navy V–12 program in June 1946, and to other groups of veterans who, upon exercise of an offered option, elected assignment to regular active duty rather than release from the active service, upon discontinuance of courses in medicine, dentistry, etc.

(*b*) Also, cases of termination of education or training in either program by reason of scholastic failure, lack of officer qualifications, physical disqualification, or "special graduates."

(*c*) Cases of certain advanced course ROTC students who were assigned to the ASTP about August 1943, pending vacancies in officer candidate schools.

(*d*) NROTC students who were commissioner prior to the completion of the regular established schedule in March 1944.

ELIGIBILITY UNDER PART VII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

CROSS REFERENCE: *Election of Benefit.* See § 21.54.

21.40 *Conditions for vocational rehabilitation.* A veteran of World War II may be eligible for vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), provided he meets the following conditions:

(a) Active military or naval service after September 15, 1940, and prior to the termination of World War II (July 25 1947, Pub. Law 239, 80th Cong.). This includes persons who served in the active military or naval service of any government allied with the United States in World War II, provided they were citizens of the United States at the time of entrance into such active service, were residents of the United States at the time of filing their application, had not received the same or similar benefits from the government with whose military forces they served: *Provided further,* That the period of active service between September 15, 1940, and July 26, 1947, was at a time when that government was at war with the common enemies.

(b) A discharge or release from active service under conditions other than dishonorable and under conditions other than those specified in section 300, Public Law 346, 78th Congress, as amended. The requirement for actual discharge does not apply to those persons who are applicants for the benefit while hospitalized, pending final discharge or release from active military or naval service, or who are on terminal leave (sec. 1507, Pub. Law 346, 78th Cong., added by sec. 10, Pub. Law 268, 79th Cong.).

(c) A compensable disability incurred in or aggravated by active service on or after September 16, 1940, and prior to the termination of World War II (July 25, 1947, Pub. Law 239, 80th Cong.)

(d) Need for vocational rehabilitation to overcome the handicap due to such disability.

ENTITLEMENT UNDER PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

§ 21.50 *Entitlement*—(a) *General.* A veteran who meets the eligibility requirements set forth herein shall be entitled to education or training at an approved educational or training institution for a period of 1 year plus a period equal to the number of years, months, and days of his active military or naval service occurring on or after September 16, 1940, and prior to the termination of the war (July 25, 1947, or the expiration of enlistment or re-enlistment entered into under sec. 11 (a), Pub. Law 190) exclusive of periods assigned for a course of education or training under ASTP or NCTP, or the time assigned as a cadet or midshipman at one of the service academies, determined in accordance with § 21.33. The entire period of entitlement shall not exceed a total of four calendar years. When the veteran's period of entitlement has been established, he shall be given notification of the exact period in years, months, and days of full-time training to which he is entitled.

(b) *Special considerations involving training in other government-sponsored training programs.* Certain courses of training which are financed by funds derived in whole or in part from Federal appropriations are available to veterans as well as to other persons. These programs are distinct and separate from the training programs established for eligible veterans under Part VII and Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12). Among such programs of training are courses provided under the U. S. public health program for persons receiving fellowship, salaries, or stipends from State or other grant-in-aid funds derived wholly or part from Federal appropriations and training under the U. S. Maritime Commission training program. Included also are student or resident trainees in hospitals, clinics, medical or dental laboratories owned or operated by the Federal Government and the District of Columbia, e. g. medical and dental internes and residents-in-training, student nurses, student dieticians, and student physiotherapists (E. O. 9750, U. S. CSC Reg. of August 7, 1946, and Pub. Law 330, 80th Cong.). Another type of such training is that provided for physician and dentist trainees pursuing training in the residency program of the department of medicine and surgery in the Veterans' Administration.

(1) It has been determined as a matter of statutory construction that the training and education provided under Part VIII, was not intended to duplicate training in the case of a veteran who is already being given a course of training under other United States Government appropriations. Accordingly, a veteran pursuing training in any program similar to those enumerated in this paragraph may not pursue concurrently education or training under Part VIII, and none of the benefits provided thereunder are legally payable (neither subsistence allowance nor tuition, books, supplies, equipment, or related expenses).

(2) The principles set forth in the foregoing do not apply, however, in the cases of veteran-trainees participating under Part VII or Part VIII in the Veterans' Administration training program for clinical psychologists and social workers who may receive subsistence allowance in appropriate amounts on the basis of the training provided them in educational institutions, even though they are being paid from Government funds for services rendered the Veterans' Administration consisting of part-time work in Veterans' Administration stations where neuropsychiatric cases are treated. Neither do they operate to disturb or interfere with training on the job under Part VII or Part VIII in certain Federal agencies and establishments which have been approved by central office. Also, there is no legal objection to concurrent payment of benefits under Part VIII and Public Law 584, 79th Congress (Fulbright Act).

§ 21.51 *Continuing entitlement.* (a) If a veteran satisfactorily completes a course of education or training in an approved institution, entered into prior to expiration of the 4-year limitation contained in section 1, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), he will have satisfied the statutory requirement as to the time within which education or training must be initiated. He may not, however (except in cases properly within the exceptional provisions of sec. 11 (a), Pub. Law 190, 79th Cong.), re-enter training after July 25, 1951, unless the Administrator approves a change of course pursuant to existing criteria concerning change of course and subject to available remaining eligibility.

(b) In accordance with Part VIII, as amended, entitlement to a period of education or training is subject to the provision that a veteran, having elected a course of education or training and having commenced the pursuit of such course, continues to maintain satisfactory work throughout the period in accordance with the regularly prescribed standards and practices of the institution.

(c) Where the evidence of record establishes that a veteran by reason of his unsatisfactory conduct will be no longer retained as a student or would not be readmitted as a student by the institution in accordance with the regularly prescribed standards and practices of the institution, there will be no further entitlement to education or training under the law.

(d) Where the evidence of record establishes that a veteran's progress is not satisfactory for a continuance in training according to the regularly prescribed standards and practices of the institution, there will be no further entitlement to education or training under the law, unless:

(1) A finding of fact may be made that the education or training institution at which the veteran is enrolled is unsuited to provide satisfactory instruction or that there are other compelling factors beyond the control of the trainee warranting transfer to another institution and such transfer is approved.

(2) Upon application by the veteran for a change of course, the record warrants a finding of fact that his failure to make satisfactory progress is not in fact due to his misconduct, neglect, or lack of application, in which case the veteran's request for a change of course may be approved.

§ 21.52 *Charges against entitlement*—(a) *General.* Charges against a veteran's period of entitlement will be made in actual years, months, and days for the period during which the veteran is carried in a training status, including periods of authorized leave.

(b) *Part-time training.* For the purpose of ascertaining the rate at which the veteran's full-time entitlement will be exhausted, part-time courses of study will be measured only in fractions of ¾, ½, and ¼, determined in accordance with the standards herein prescribed for the type of training course being pursued. Fractions of ½ day or more will be counted as a full day and fractions of less than ½ day will not be counted.

(1) For undergraduate courses in collegiate institutions which use a standard unit of credit recognized by accrediting associations, determinations will be based on the number of standard semester hours for which the veteran is registered for credit. Less than 12 but not less than 9 semester hours per semester, or the equivalent, will be counted as three-fourths time. Less than nine but not less than six semester hours per semester, or the equivalent, will be counted as one-half time. Less than six semester hours per semester, or the equivalent, will be counted as one-fourth time.

(2) For graduate courses or advanced professional courses such as medicine, the determination will be made in the individual case in accordance with the policy of the institution. A certification by a responsible official of the institution stating that the course being followed is considered as three-fourths time, half time, or one-fourth time will be accepted.

(3) For courses in all other schools, including high schools, determinations will be based on clock hours of required attendance at the school. Less than 25 but not less than 18 clock hours of required attendance per week will be counted as three-fourths time. Less than 18 but not less than 12 clock hours

of required attendance per week will be counted as one-half time. Less than 12 clock hours of required attendance per week will be counted as one-fourth time.

(4) For on-the-job training, determinations will be based on the number of hours per week which the trainee is required to devote to training, according to a specific schedule which the employer-trainer will be required to furnish. Less than 36 but not less than 27 hours per week will be counted as three-fourths time. Less than 27 but not less than 18 hours per week will be counted as one-half time. Less than 18 hours per week will be counted as one-fourth time.

(5) For combinations of institutional and on-the-job training, each component type will be measured in accordance with the appropriate standard in subparagraphs (1), (2), (3) and (4) of this paragraph and the two fractions will be combined.

(6) For flight training, determinations will be based on the clock-hours of required attendance at the school, with ground instruction valued at one clock hour attendance for each required hour of classroom ground instruction and flight instruction valued at two clock hours for each hour of flying time.

(c) *Correspondence courses.* A veteran who elects a course by correspondence only shall have charged against his period of entitlement one-fourth of the elapsed time in following such course.

(d) *Courses costing in excess of the rate of $500 for an ordinary school year.* An eligible person pursuing a course for which he elects to have payments made in excess of $500 for a full-time course for an ordinary school year shall have charged against his period of entitlement the length of the school year and an additional period representing 1 day of eligibility for each $2.10 in that part of the cost which is in excess of $500. For courses being pursued on a part-time basis under this provision of the law, there shall be charged against the veteran's period of entitlement the usual charge for a part-time course and an additional period of 1 day of eligibility for each $2.10 in that part of the cost which is in excess of the relevant proportion of $500 applicable to a part-time course. For example, a veteran pursues a full-time course during the school year which begins on September 24 and ends on June 7, the cost of which amounts to $542. There shall be regularly charged against the veteran's entitlement the period from September 24 to June 7, 8 months and 14 days, but because of the $42 of cost in excess of $500, an additional period of 20 days ($42 divided by $2.10) shall be charged against his entitlement making a total charge of 9 months and 4 days. As a further example, a veteran pursues a half-time course beginning September 24 and ending June 7, the cost of which is $292. There shall be regularly charged against his entitlement 4 months and 7 days (one-half of 8 months and 14 days) and an additional period of 20 days because of the $42 of cost in excess of $250, the normal maximum cost of a half-time course. This makes a total charge against the veteran's eligibility of 4 months and 27 days (38 U. S. C. ch. 12, Reg. 1 (a), part 8, sec. 5).

(e) *Short, intensive, postgraduate or training course of less than 30 weeks.* An eligible person pursuing a short, intensive, postgraduate or training course of less than 30-weeks duration shall have charged against his period of entitlement the proportion of an ordinary school year (34 weeks or 238 days) which the cost of the course bears to $500. Thus, there will be charged against the veteran's period of entitlement 1 day for each $2.10 ($500 divided by 238) of the cost of the course but the total charge against the period of eligibility shall not be less than the number of days a full-time course is pursued. For example, for a 6-weeks course costing $252 there would ordinarily be charged against the veteran's entitlement 42 days (1 month and 12 days) but because of the cost there will be charged against his entitlement 120 days (4 months and no days), arrived at by dividing $252 by $2.10 (38 U. S. C. ch. 12, Reg. 1 (a), Part 8, sec. 3b).

§ 21.53 *Extension of entitlement.* In view of the positive terms of paragraph 2, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), by section 5 (b) of Public Law 268, 79th Congress, in those cases where normal expiration of a veteran's entitlement is established as of a date following the expiration of a major portion of a quarter or semester, the date of expected expiration of entitlement will be fixed as of the ending date of such quarter or semester. Due caution will be taken in all cases to avoid extension of entitlement in cases of "excess cost" courses and courses not offered on a term or semester basis, which extension may not in any case exceed the limitations imposed herein.

(a) *If enrollment is for the quarter or semester in a course of 30 weeks or more.* (1) Whenever the period of eligibility ends during a quarter or semester and after a major portion of such quarter or semester has expired, such period shall be extended to the termination of such unexpired quarter or semester provided the customary charge for tuition does not exceed the rate of $500 for an ordinary school year.

(2) In case the customary charge exceeds the rate of $500 for an ordinary school year and the veteran has executed a VA Form 7-1950a, Application for a Course of Education or Training Where the Customary Charges Are in Excess of the Rate of $500 for an Ordinary School Year, the period of eligibility will be extended either to the end of the quarter or semester or for a period of time during which the charge to the Veterans' Administration for tuition, fees, books, supplies, equipment, and other necessary expenses equals $125, whichever is the lesser. The period the entitlement is to be extended may be determined as follows:

(i) Find the total charge by the institution for 1 week by dividing the total charge for the quarter or semester by the number of weeks in the quarter or semester.

(ii) Divide $125 by the cost per week found in subdivision (i) of this subparagraph.

(iii) The result will be the weeks and fractions of weeks which will be the maximum period for which the period of eligibility and entitlement can be extended.

(b) *If enrollment is for a course of 30 weeks or more in an institution which does not subdivide the year.* (1) When a veteran-trainee is enrolled in and attending an educational institution which does not divide its course into quarters or semesters and his period of eligibility ends after half of the period or year of instruction is completed or after 9 weeks, whichever is the lesser in time, the period of eligibility shall be extended either to the end of the course or for not to exceed nine additional weeks, whichever is the lesser in time, provided the trainee is enrolled for and pursuing a course for which the customary charge does not exceed the rate of $500 for an ordinary school year.

(2) When the institution does not divide its course into quarters or semesters and the charge for the course exceeds the rate of $500 for an ordinary school year and VA Form 7-1950A has been executed, the period of eligibility will be extended either to the end of the course or the year or for a period of time during which the charge to the Veterans' Administration for tuition, fees, books, supplies, equipment, and other necessary expenses equals $125, whichever is the lesser. The period the entitlement is to be extended may be determined as follows:

(i) Find the total charge by the institution for 1 week by dividing the total charge for the course or the year by the number of weeks in the course or the year.

(ii) Divide $125 by the cost per week found in subdivision (i) of this subparagraph.

(iii) The result will be the weeks and fractions of weeks which will be the maximum period for which the period of eligibility and entitlement can be extended.

(iv) If, as in flight training the cost per week cannot be found because instruction is charged by the hour, the extension of period of entitlement will be limited to that period for which the charge to the Veterans' Administration will not exceed $125.

(c) *If enrollment is for a course of less than 30 weeks.* The rules set forth in subdivisions (i) and (ii) of paragraph (b) (2) of this section will apply for a veteran-trainee except that in no case can the Veterans' Administration pay more than the total of $500 for a course of less than 30 weeks.

§ 21.54 *Election of benefit.* (a) Any person whose eligibility for education or training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), has been established in accordance with § 21.30 and who also has eligibility for vocational rehabilitation training under Part VII, as amended, may elect either benefit or may be provided an approved combination of courses: *Provided*, That the total period of any

such combination of courses shall not exceed the maximum period or limitations under either Part VII or Part VIII, as amended, whichever affords the greater period of eligibility. An approved combination of courses under these laws may not be construed to mean concurrent pursuit under both laws. This provision of the law offers the veteran the right to elect whether he will take training under either Part VII or Part VIII, as amended, and further specifies that the Veterans' Administration may provide him with a combination of courses involving training under one act supplemented with training under the other. However, it is wholly within the discretion of the Veterans' Administration whether any combination of courses is to be provided in any case for the veteran.

(b) For the purposes of election between Parts VII and VIII, a presumption of eligibility under Part VII will attach (if need has not been officially determined to exist or not to exist) when there is of record an official finding by duly constituted claims authority that the veteran has a World War II service-connected compensable disability. This presumption may be rebutted in any case only through filing by the veteran of VA Form 7–1900 and a subsequent determination that need for training does not exist.

§ 21.55 *Entrance into training.* (a) A veteran who has satisfied the entrance requirements of an approved educational or training institution which will accept or retain him as a student in any field or branch of knowledge which he elects and which institution finds him qualified to undertake or pursue may be entered into education or training by the institution selected by him if:

(1) A claim on VA Form 7–1950 having been filed and eligibility having been determined, he presents a Certificate of Eligibility and Entitlement to an approved institution showing his entitlement to a course of education or training (in years, months, and days).

(2) No claims on VA Form 7–1950 having been filed with the Veterans' Administration and the veteran enters into an approved institution under conditions satisfactory to the institution, in which case it will be necessary that VA Form 7–1950 be executed and forwarded to the appropriate regional office of the Veterans' Administration in order that eligibility may be determined.

(3) In any case in which VA Form 7–1950 is filed through an approved institution, upon determination of eligibility the institution will be advised of the action taken.

(b) Persons who were discharged from the armed forces prior to July 26, 1947, must initiate their courses of education or training before July 26, 1951.

(c) Persons, including enlistees under section 11 (a), Public Law 190, 79th Congress, who were in service after July 25, 1947, must initiate their courses of education or training within 4 years from the date of their first discharge after July 25, 1947, or termination of enlistment, whether separated from active service or re-enlisting.

(d) Education or training will not be afforded beyond July 25, 1956, to persons who were discharged from the armed forces prior to July 26, 1947.

(e) Education or training will not be afforded beyond July 25, 1956, to persons who continue on active duty in the armed forces after July 25, 1947, but whose present term of voluntary enlistment did not commence between October 6, 1945, and October 5, 1946, inclusive.

(f) Education or training will not be afforded beyond 9 years after the termination of a person's enlistment or reenlistment contracted for between October 6, 1945, and October 5, 1946, inclusive.

DOMESTIC RELATIONS DETERMINATIONS

§ 21.70 *Jurisdiction over determinations.* (a) Determinations of domestic relations questions other than those indicated in § 14.502 of this chapter may be made by the vocational rehabilitation and education activity in regional office and central office cases where, as contemplated by the last sentence of § 3.6 of this chapter, the circumstances involved are identical with those in a case in which a formal opinion has been rendered by the solicitor or by a chief attorney of a branch office. Except as provided in § 21.73 (b), determinations made by the vocational rehabilitation and education activity will be approved in cases under the jurisdiction of the regional office by the chief, vocational rehabilitation and education division, and in cases under the jurisdiction of central office, by the chief of the division concerned.

(b) Within the limitations described in paragraph (a) of this section, determinations may be made by the vocational rehabilitation and education activity of domestic relations questions, including the legality of adoption except where the letters of adoption are not regular on their face or circumstances surrounding the adoption suggest that the procedure was not accomplished in conformity with the law of the State involved.

(c) Current determinations of relationship and dependency and domestic relations questions made in accordance with existing instructions by either the vocational rehabilitation and education activity or the adjudication activity will be binding one upon the other in the absence of clear and unmistakable error.

CROSS REFERENCES: *Requirements for submission of evidence.* See §§ 3.30 through 3.40 of this chapter.

Definitions and proof of relationship and dependency. See §§ 3.40 through 3.57 of this chapter.

§ 21.71 *Evidence requirement to establish marital status.* Where a claim involves the establishment of a valid marriage, the claimant will be required to furnish the evidence required under Veterans' Administration regulations. If such evidence cannot be furnished, the claimant will be required to explain the reason. This explanation will be considered evidence, and the time limit for the submission of evidence will be applicable.

§ 21.71 *Determinations where evidence of marital status is incomplete.* Claims will not be disallowed merely because a claimant is unable to furnish satisfactory evidence of the dissolution of prior marriages of either spouse. In such instances, after all facts affecting the validity of the marriage are established by the best obtainable evidence, a determination of the validity of the marriage will be made on the evidence of record by the vocational rehabilitation and education activity or the case will be referred to the chief attorney of the branch office or the solicitor for consideration.

§ 21.73 *Common-law marriages.* (a) When a common-law marriage is alleged, the claimant will be required to establish a prima facie case of marriage by submitting an affidavit setting out in detail all of the facts and circumstances concerning the alleged common-law marriage such as the agreement between the parties at the inception of their cohabitation, the period of cohabitation, places and dates of residence, and whether or not children were born as the result of such relationship. This affidavit should also show whether the parties were members of any church or organization as husband and wife, had jointly entered into any business transaction, or jointly executed any legal document, or had held title jointly to any real estate. There should also be required similar affidavits of two or more persons who know as the result of personal observation the reputed relationship which existed between the parties of the alleged common-law marriage, including the periods of cohabitation, places of residence, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived. In the event that children were born as a result of such cohabitation, the claimant should furnish the birth certificates of such children.

(b) In any case in which it is shown that the parties to an alleged common-law marriage have at all times during their cohabitation resided only in jurisdictions which do not now recognize common-law marriages and have not recognized such marriages since the time of the inception of their cohabitation, the claim based on common-law marriage may be disallowed by the adjudicating office without submission.

§ 21.74 *Illegitimate children of veterans.* (a) Section 7, Public Law 144, 78th Congress, amending paragraph VI of Veterans' Regulation 10 series (38 U. S. C. ch. 12), provides among other things that the term "child" shall include an illegitimate child, but as to the father, only (1) if acknowledged in writing signed by him, or (2) if he has been judicially ordered or decreed to contribute to the child's support, or (3) if he has been, prior to his death, judicially decreed to be the putative father of such child, or (4) if he is otherwise shown by evidence satisfactory to the Administrator of Veterans' Affairs to be the putative father of such child (§§ 3.42, 3.45 and 3.46 of this chapter).

(b) Determinations of relationship in all the above instances will be made in the vocational rehabilitation and education divisions of the regional offices or centers. In cases in which none of the conditions of paragraph (a) (1), (2), or (3) of this section have been met and evidence has been submitted which is considered adequate to establish the reputed paternity of an illegitimate child, as contemplated by condition in paragraph (a) (4) this section, a brief summary of the facts, including a description of the supporting evidence, will be submitted to the director, registration and research service, for vocational rehabilitation and education in central office cases, or the chief, vocational rehabilitation and education division, in field cases for a finding as to relationship. Evidence of reputed paternity may consist of, but is not limited to, a certified copy of the public record of birth showing that the veteran was named as father of the child; statements of persons who know that the veteran accepted the child as his; or information obtained from public records, such as school or welfare agencies, which shows that the veteran was reputed to be the father of the child. The sufficiency of such evidence will be determined in accordance with the facts in the individual case.

(c) As to the mother of an illegitimate child, proof of birth is all that is required.

§ 21.75 *Submission of questions for original opinion.* Requests for legal opinions concerning domestic relations of doubtful legality involving circumstances other than those outlined in § 21.70 (a) and (b) will be made in memorandum form, setting forth the question upon which an opinion is desired, together with a complete and accurate statement of the facts involved. The request, accompanied by the claims folder, will be addressed in regional office cases by the chief, vocational rehabilitation and education division, to the director, vocational rehabilitation and education service, branch office, for reference as necessary to the chief attorney, branch office; in branch office cases by the director, vocational rehabilitation and education service, to the chief attorney, branch office; in central office cases, by the director, registration and research service for vocational rehabilitation and education, to the solicitor.

§ 21.76 *Dependency of child of female veteran.* A minor child of a female veteran may be considered her dependent for the purpose of subsistence allowance under Part VII and Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12). Such child may be considered a dependent of the female veteran where her husband, who is also a veteran, is in training under Part VII or Part VIII and is in receipt of subsistence allowance based on the wife and the same child.

APPORTIONMENT OF SUBSISTENCE ALLOWANCE

§ 21.90 *Apportionment; general.* Where in order under the conditions specified in §§ 3.310 to 3.317 of this chapter, subsistence allowance payable on account of training will be apportioned at the rates provided in § 3.311 of this chapter. If the application of the above provision should in any case work a hardship upon the veteran or any of his dependents and relief can be afforded without undue hardship to other persons in interest, the chief, registration and research section, will determine in cooperation with the adjudication officer, subject to regular appellate rights, the exact amount to be apportioned to each individual in interest. Current determinations of relationship or dependency made in accordance with existing instructions by either the adjudication activity or by the vocational rehabilitation and education activity will be binding one upon the other in the absence of clear and unmistakable error.

CROSS REFERENCES: *Apportionments authorized.* See § 3.310 of this chapter.

Table of apportionments. See § 3.311 of this chapter.

Special apportionments. See § 3.315 of this chapter.

Discontinuance of apportionments: Effective dates. See § 3.317 of this chapter.

§ 21.91 *Apportionment of subsistence allowance not authorized.* Where the evidence of record shows that the veteran and his wife are separated, the whereabouts of the wife unknown, and all reasonable means to locate the wife have been unsuccessful, or where she states in writing that she desires no share of the award or fails for 90 days or more to respond to correspondence from the Veterans' Administration informing her of her rights, which is not returned unclaimed, there will be no apportionment and no additional subsistence allowance shall be payable on her account. (Also see §3.312 of this chapter)

§ 21.92 *Apportionment to minor child legally adopted outside of veteran's family.* Where a veteran in training under Public Laws 16 or 346, 78th Congress, as amended, claims and establishes as a dependent or dependents a minor child or children legally adopted outside of his family, only such additional amount of subsistence allowance on account of the existence of such child or children will be apportioned in favor of the child or children. The veteran is not entitled in his own right to whatever additional amount of subsistence allowance is payable because of the existence of such child.

§ 21.93 *Effective date of apportionment.* (a) In order to avoid overpayments and disparities in effective dates of apportionments of subsistence allowance and compensation or pension—where the two benefits are being received concurrently—the vocational rehabilitation and education division upon receipt of notice of estrangement or that a child or children are not in the custody of the claimant will execute the proper VA Form of the 1907 series to authorize an apportionment of subsistence allowance, if in order, effective as provided in § 3.316 of this chapter. The case folder with the proper form will be promptly forwarded to the adjudication division through the administrative division for action on apportionment of compensation or pension, if in order, whereupon both award actions will be submitted simultaneously by the adjudication division to the finance division. Conversely, if notice requiring apportionment of compensation or pension is received by the adjudication division, action taken by that division will likewise be forwarded to vocational rehabilitation and education division for necessary action and submission to finance. When, for good reason, the activity to which the authorization is referred may not be able to complete its action in time to avoid a discrepancy in effective dates of apportionment of the separate benefits, that agency will take its action in accord with established principles and return the record intact to the agency of first jurisdiction for reconciliation of its former action with that of the secondary activity.

(b) Apportionments of initial awards of either benefit will be for the entire period as provided in § 3.316 of this chapter, that is, from the commencement date of allowance of the benefit.

AUTHORIZATION OF SUBSISTENCE ALLOWANCE UNDER PART VIII, VETERANS' REGULATION NO. 1 (A), AS AMENDED (38 U. S. C. CH. 12)

§ 21.100 *Effective dates of original claim for subsistence allowance.* (a) The effective beginning date of an authorization of subsistence allowance shall be the date of application for education or training, the date of entrance into training or reentrance after a period of interruption or discontinuance, or the date of approval of the institution course, or establishment by the appropriate agency of the State or by the Veterans' Administration, whichever is the later. There is no legal authority to authorize subsistence allowance prior to the effective date of the approval of an educational or training institution or establishment.

(b) All authorization actions accomplished by the registration and research section entering veterans into education or training (full-time or part-time institutional training, on-the-job or apprenticeship training, etc.) will authorize subsistence allowance at the rate provided for a person without a dependent or dependents, unless satisfactory evidence of dependency accompanies his application or is of record which warrants an authorization of subsistence allowance on account of dependency. If evidence of dependency accompanies the veteran's application or is of record, the appropriate rate reflecting such dependency will be authorized.

(c) Where the veteran asserts on his application for education or training that he has a dependent or dependents, he will be informed of the necessity to submit satisfactory evidence of such dependency and that until such evidence is received in the Veterans' Administration, subsistence allowance on the basis of dependency will not be authorized. If satisfactory evidence of such dependency is received within 1 year of the date of request therefor, subsistence allowance payable because of the dependency will be authorized effective as of the date of entrance into training or the receipt of the application if received at a later date. If such evidence is received after 1 year of the date of request therefor, the effective date of an authorization in sub-

sistence allowance on account of dependency will be as of the date of the receipt by the Veterans' Administration of the evidence showing entitlement thereto.

§ 21.101 *Effective date of claim for increase in rate of subsistence allowance.* The effective date of an increase in subsistence allowance on account of a dependent will be the date the evidence establishing the dependency is received in the Veterans' Administration.

§ 21.102 *Effective closing dates of an authorization of subsistence allowance.* The effective closing date of an authorization of subsistence allowance shall be determined by the type of training being pursued in accordance with the criteria set forth below:

(a) *Schools, colleges, and universities.* The effective closing date shall be be the closing date of the course (this date may be extended if the veteran applies for and is granted leave) or the closing date of the period of enrollment as certified by the school (this date may be extended if the veteran applies for and is granted leave), or the expiration date of the veteran's entitlement, whichever is the earlier, except that in institutions of higher learning the following shall apply:

(1) When the period of enrollment as certified by the school is for an ordinary school year and the interval between consecutive terms or semesters is in no case greater than 15 calendar days' duration, the authorization of subsistence allowance shall terminate as of the date 15 calendar days following the closing date of the school year as shown by the catalog of the institution. If the certification by the institution is for the ordinary school year plus a summer term and no interval between two consecutive terms is in excess of 15 calendar days in duration, the authorization of subsistence allowance shall terminate as of the date 15 calendar days following the closing date of the summer term as shown by the school catalog. If the certification by the school is for four quarters and no interval between quarters exceeds 15 calendar days in duration, the authorization of subsistence allowance shall terminate as of the date 15 calendar days after termination of the fourth quarter as shown by the school catalog. If the certification by the school is for a single term, single quarter, or single summer session, the authorization of subsistence allowance shall terminate as of the date 15 calendar days following the closing date of such certified term as shown by the school catalog. The provisions of this subparagraph apply even though the closing of the term constitutes the completion of the course for which the veteran was enrolled.

(2) If any interval between terms (within a period of certified enrollment) is in excess of 15 calendar days, the authorization of subsistence allowance shall terminate as of the date 15 calendar days following the end of the term immediately preceding such interval, as shown by the school catalog, and shall recommence as of the date of the commencement of the term immediately following such interval as shown by the school catalog, e. g., the school year begins September 5, 1947, the spring term ends June 5, 1948, the summer term commences June 25, 1948, and the summer term ends August 10, 1948; subsistence allowance will be authorized thus:

Monthly payment	Starting date	Ending date
$75.00	Sept. 5, 1947	June 20, 1948
90	June 21, 1948	June 24, 1948
$75.00	June 25, 1948	Aug. 25, 1948

(3) Leave for veterans enrolled in institutions of higher learning will not be authorized for any period in addition to the extensions of training status herein provided.

(4) In no event will the extension authorized herein be applicable where a veteran interrupts training at any time prior to the end of a term, but authorization in such case shall terminate training status as of the date of the interruption.

(b) *Apprenticeship or other on-the-job training.* The effective closing date shall be the ending date of the training as established by the training agreement or the expiration date of the veteran's entitlement, whichever is the earlier.

(c) *Institutional-on-farm.* The effective closing date shall be March 31 of the next succeeding year, the closing date of the course, or the expiration date of the veteran's entitlement, whichever is the earlier.

§ 21.103 *Effective dates of adjustments and discontinuances of subsistence allowance.* Reduction or discontinuance of an award of subsistence allowance shall be effective:

(a) In the event of death of a dependent, as of the date of death.

(b) In the event of divorce, the date preceding the date of divorce.

(c) In case of a child, the date preceding the eighteenth anniversary of date of birth or if attending school after age 18, the date of cessation of school attendance or the date preceding the twenty-first anniversary of the date of birth, whichever is the earlier; the date preceding date of marriage; in case of cessation of incapacity to support self by reason of mental or physical defect last day of month in which reduction is approved.

(d) All other reductions, discontinuance, or changes in rate of subsistence allowance shall be in accordance with the facts found in any case, subject to the governing regulations and procedures applicable to waivers and recoveries, except: Reductions in rates of subsistence allowance because of facts found in the reports of compensation from productive labor shall not be made prior to the first day of the calendar month in which the report is due or the first day of the calendar month in which the evidence warranting a reduction is received, whichever is the earlier.

§ 21.104 *Rates of subsistence allowance—*(a) *$75, $105, or $120 per month.* On or after April 1, 1948, the subsistence allowance rates of $75 per month for a veteran without a dependent, $105 per month for a veteran with one dependent, or $120 per month for a veteran with two or more dependents apply to those veteran-students pursuing courses of full-time and part-time institutional training as defined below. (Rates in effect prior to April 1, 1948, were $65 per month for a veteran without a dependent and $90 per month for a veteran with a dependent or dependents.) On or after August 8, 1946, all subsistence rates are subject to the statutory ceiling limitation on combinations of subsistence allowance and compensation for productive labor, as provided in § 21.105.

(1) *Full-time institutional training.* (i) In undergraduate courses in collegiate institutions which use a standard unit of credit recognized by accrediting associations, 12 semester hours or more will be considered a course of full-time institutional training.

(ii) For graduate courses or advanced professional courses such as medicine, the determination will be made in the individual case in accordance with the policy of the institution and a certification by a responsible official of the institution.

(iii) In all other schools, including high schools, 25 or more clock hours of required attendance at the school will be considered a course of full-time institutional training.

(2) *Part-time institutional training.* Part-time institutional training will be measured only in fractions of three-fourths, one-half and one-fourth for purposes of determining the amounts of subsistence allowance payable.

(i) In undergraduate courses in collegiate institutions which use a standard unit of credit recognized by accrediting associations, the number of standard semester hours per semester or the equivalent, for which the trainee is registered for credit will determine the extent of the part-time course, as outlined below:

(*a*) Three-fourths time; less than 12 but not less than 9 semester hours.

(*b*) One-half time; less than 9 but not less than 6 semester hours.

(*c*) One-fourth time; less than 6 but not less than 3 semester hours.

(*d*) No subsistence allowance will be paid for less than three semester hours per semester, or the equivalent.

(ii) For graduate courses or advanced professional courses such as medicine, the determination will be made in the individual case in accordance with the policy of the institution. A certification by a responsible official of the institution stating that the course being followed is considered as three-fourths time, one-half time, or one-fourth time will be accepted and subsistence allowance will be paid accordingly.

(iii) In courses in all other schools, including high schools, the number of clock hours of required attendance at the school will determine the extent of the part-time course as outlined below:

(*a*) Three-fourths time; less than 25 but not less than 18 clock hours of required attendance per week.

(*b*) One-half time; less than 18 but not less than 12 clock hours of required attendance per week.

(*c*) One-fourth time; less than 12 but not less than 6 clock hours of required attendance per week.

(d) No subsistence allowance will be paid for less than 6 clock hours of required attendance per week.

(iv) For courses in flight schools, the determination of the subsistence allowance to be paid will be based on the clock hours of required attendance at the school in accordance with existing instructions, with ground instruction valued at 1 clock-hour attendance for each required hour of classroom ground instruction, and flight instruction valued at 2 clock hours for each hour of flying time. (The counting as 2 hours of actual attendance of each 1 hour of actual flying time is based on the fact that by common requirement and experience the flight student spends at the school the additional allowed time before and after actual flying, receiving instruction, advice, etc., from the instructor or in performing duties necessary to starting actual flying or completing the lesson period after flying.)

(b) *$65 or $90 per month.* The subsistence allowance rates of $65 or $90 apply to apprentice or other on-the-job training, institutional on-farm training, and combination or cooperative courses requiring less than the normal full-time classroom instruction. On or after April 1, 1948, for a veteran who pursues a part of his course in an educational institution, the extent of such training will be determined in accordance with the criteria set out in paragraph (a) (2) of this section, and subsistence allowance in addition to the basic rates of $65 and $90 will be payable to the extent of the appropriate fractional part (¾, ½, ¼) of the difference between the basic rates of $65 or $90 and $75, $105, or $120, whichever is applicable. These rates are subject to the following limitations:

(1) For on-the-job training, the number of hours per week which the trainee is required to devote to training, according to a specific schedule which the employer-trainer will be required to furnish, will determine the maximum payment of subsistence allowance.

(i) Full-time; 36 or more hours per week.

(ii) Three-fourths time; less than 36 but not less than 27 hours per week.

(iii) One-half time; less than 27 but not less than 18 hours per week.

(iv) One-fourth time; less than 18 but not less than 9 hours per week.

(v) No subsistence allowance will be paid for less than 9 hours required on-the-job training per week.

(2) Where the veteran is receiving compensation for productive labor, performed as part of his apprentice or other training on the job, the amount of subsistence when added to his current monthly salary or wage based upon the standard workweek exclusive of overtime, shall not be in excess of the standard beginning salary or wage payable to a journeyman workman in the occupation or trade in which training is being given, similarly based upon the standard workweek exclusive of overtime. The trained worker or journeyman wage will be fixed as the rate of wage or salary to be attained at the end of the course, but in no case shall the period be longer than the first 4 years of the veteran's training, if an apprentice course, or 2 years, if other training on the job.

(3) The rate of subsistence allowance, but in no case greater than $65 or $90 per month, shall be such that when added to the compensation received by the trainee for productive labor, the sum shall not exceed the statutory ceiling as provided in § 21.105.

§ 21.105 *Statutory limitation.* On or after August 8, 1946, but prior to April 1, 1948, the rate of subsistence allowance plus compensation for productive labor received by a veteran pursuing a course of education or training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), shall not exceed $175 per month if without a dependent or $200 per month if he has a dependent or dependents. On or after April 1, 1948, the rate of subsistence allowance plus compensation received for productive labor by a veteran pursuing a course under Part VIII shall not exceed $210 per month for a veteran without a dependent, $270 per month for a veteran with a dependent, or $290 per month for a veteran with two or more dependents.

§ 21.106 *Compensation for productive labor, definition of.* Compensation for productive labor means wages, salary, commission, bonus, or other payments received by a veteran by reason of his employment, whether self-employed or otherwise, and regardless of whether such employment is related to his training.

(a) For the purpose of Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), the term "wages" means only so much of the compensation as is derived from productive labor based on the standard workweek for the particular trade or industry in the immediate community in which the veteran is employed. If there is not a uniform practice for a trade or industry within a community, the standard workweek in the establishment in which the veteran is employed shall be considered in computing the rates payable. Any compensation received for productive labor performed beyond the standard workweek is not to be considered as compensation to be reported. (On or after August 8, 1946, and prior to April 1, 1948, the term "wages" included as compensation customarily scheduled overtime in the establishment where the veteran was employed.)

(b) When lodging, meals, laundry, or other services are furnished a person in training, the reasonable value of such services will constitute a part of the wages or salary for the purpose of determining the rate of compensation for productive labor, except that, if living quarters or meals are furnished to the employee-trainee for the convenience of the employer-trainer, the value thereof need not be computed and added to the compensation otherwise received by the employee-trainee for these purposes. A certification by the employer-trainer to this effect will be accepted by the Veterans' Administration for the purpose of subsistence allowance authorizations.

(c) All advancements, drawing accounts, allowances, commissions, bonuses, wages, or salaries paid to a veteran pursuing training in the field of insurance or other fields where the manner of employment compensation is similar are considered as compensation from productive labor. Any money advanced or paid as reimbursement to the veteran for his own actual training expenses incurred in connection only with the training phase of his course and which is not income from productive labor to be retained by the trainee as such is excepted and should not be reported as compensation for productive labor. Such training expense money must maintain a separate entity as expense as distinguished from income and particularly reported as such. Only such amounts as are actually expended for necessary expenses incurred in connection with the pursuit of the approved training program may be considered as such expense in determining the trainee's income from productive labor.

(d) Advertising and promotional expenses incurred by the trainee for the purpose of increasing sales (and hence his income) shall, in general, not be considered as necessary expense incurred in connection with the training phase of the veteran's program. They will not be deductible from amounts received or advanced by the employer-trainer but will be included in the computation and reporting of compensation for productive labor within the meaning of the law.

(e) In general, only those sums reportable by the trainee and/or trainer-employer as expense rather than income to the Bureau of Internal Revenue for income tax purposes shall be considered as training expense as distinguished from compensation for productive labor.

(f) Christmas gifts in reasonable amounts where such gifts are made by a firm or business establishment in the same amount to each employee-veteran and nonveteran alike, without regard to the length of service or wage or salary paid to the individual employee, need not be reported as income for productive labor.

(g) Where by reason of the type of the employment, compensation for productive labor is seasonal or irregular the veteran's over-all compensation over a period of not exceeding 12 months should be prorated in determining the monthly rate to be applied. This contemplates that the cases of veterans who are pursuing courses where the compensation is shown to be seasonal or irregular will be individualized and the rate of subsistence allowance fixed in accordance with the best established facts concerning the monthly pro rata amount of annual income.

§ 21.107 *Periodic reports of compensation for productive labor.* (a) Rates of subsistence allowance payable will be determined for any periods upon the best available evidence including the veteran's estimate of anticipated compensation to be received from productive labor, his report of the actual compensation received during the immediately preceding period, the employer's certification as to the compensation paid during the immediately preceding period, and/or that expected to be paid for the

current period. The rate having thus been fixed will remain effective for the current period or until there is of record evidence warranting a change in rate. Changes in the rate will be effective in accordance with the facts found, but reductions in rate shall not be made effective prior to the first day of the calendar month in which the report is due or the first day of the calendar month in which the evidence warranting a reduction is received, whichever is the earlier.

(b) In the case of veterans pursuing full-time training in institutions of higher learning (universities, colleges, professional or technological schools, teachers colleges and normal schools, and junior colleges which offer instruction on the basis of standard units of credit recognized by national or regional accrediting associations), the rate of payment of subsistence allowance will be authorized for the period of enrollment and will remain unchanged for such period in the absence of any subsequent evidence justifying an amendment to the rate. No further report of earnings will be required, except as to changes therein.

(c) For veterans pursuing part-time courses in institutions of higher learning or full- or part-time courses in schools other than institutions of higher learning as defined above operating on a term or semester basis, the report will be required at intervals of not greater than once a term or semester showing compensation from productive labor.

(d) For veterans enrolled in full- or part-time courses in all other institutions not on a term or semester basis and for veterans enrolled in on-the-job training, periodic reports will be required at 4-month intervals.

(e) Cases reviewed at 4-month intervals will be reviewed in accordance with the following schedule: All cases in which the C-number ends in 0 or 1 will be reviewed January, May, and September; ending in 2 or 3 will be reviewed in February, June, and October; ending in 4, 5, or 6 will be reviewed in March, July, and November; ending in 7, 8, or 9, in the months of April, August, and December.

(f) For veterans enrolled in institutional on-farm training, authorizations of subsistence allowance will be made in accordance with the provisions of § 21.109.

(g) In determining whether the proviso to paragraph 6, section 2, Public Law 679, 79th Congress, will affect payments, the total of compensation received from productive labor will be prorated over an entire period of reporting (not exceeding 12 months in length) to determine whether the rate of the sum of subsistence and compensation exceed the $175 or $200 limitation. Where adjustment in the rate of subsistence allowance is in order, the appropriate rate will likewise be a uniform amount for the entire period covered by the report.

§ 21.108 *Subsistence allowance for cooperative training.* From evidence of record, the number of weeks of the school portion of the program, the number of weeks in on-the-job training, and the number of clock hours of semester hours of training pursued during the school portion of the program will be determined. The appropriate rate of subsistence allowance to be authorized will be determined by multiplying the number of semester hours or clock hours pursued in the school portion of the program by the number of weeks spent in school. This product is divided by the number of weeks in a complete cycle of training consisting of the school and the on-the-job portions of the program. For example: A veteran is enrolled in a cooperative program consisting of 13 weeks in school during which 25 clock hours of course work is pursued; 7 weeks are devoted to training on the job, resulting in a cycle of 20 weeks of training; 25 x 13 equals 325 clock hours; 325 clock hours divided by 20 weeks equals 16 clock hours per week or ½-time school training during the 20-week cycle. Therefore, subsistence allowance to be authorized in the case of a veteran without a dependent is $65 plus $5 (½ of the $10 increase, Pub. Law 512, 80th Cong.) or $70 per month authorized throughout the 20-week cycle of training, subject to ceiling provisions of the law. In applying the ceiling provisions, the total compensation for productive labor will be reported and prorated over the entire cycle.

§ 21.109 *Determination of subsistence allowance for institutional on-farm training.* When a veteran having entitlement under the law elects to pursue a course of institutional on-farm training and such course has been approved by the appropriate agency of the State and the Veterans' Administration is notified that he has commenced training in such course, the Veterans' Administration will pay full subsistence allowance if the training institution certifies that the veteran is pursuing a full-time course in accordance with the standards laid down in Public Law 377, subject to the statutory limitations as provided in § 21.105.

(a) *Compensation for productive labor.* Compensation for productive labor for a veteran who performs part of his course on a farm under his own control will be derived from the farm accounting record system kept as a part of the course of instruction and shall be determined on a calendar-year basis as follows:

(1) Cash receipts ..... $.....
(From sale of crops, livestock, and livestock products.)
(2) Increase in inventory ..... $.....
(3) Value of family living furnished by the farm ..... $.....
(Food, fuel, and shelter.)
(4) Total farm income ..... $.....
(Add items 1, 2, and 3.)
(5) Cash farm operating expenses ..... $.....
(6) Decrease in inventory ..... $.....
(7) Value of family labor used in farm production ..... $.....
(Excluding veteran's own labor.)
(8) Total farm expenses ..... $.....
(Add items 5, 6, and 7.)
(9) Net farm income ..... $.....
(Item 4 minus item 8.)
(10) Interest on capital investments ..... $.....
(11) Veteran's income from productive labor ..... $.....
(Item 9 minus item 10.)

The amount shown under item 11 as "Income from productive labor" will be the amount reported by the veteran and certified by the instructor as representing the veterans' compensation for productive labor. In the case of the veteran who performs part of his course as the employee of another compensation for productive labor reported to the Veterans' Administration shall include all wages paid by the farmer-trainer whether in cash or kind including allowances for food, fuel, and shelter for the use of the trainee and his family as determined by the veteran, the farmer-trainer, and the instructor.

(b) *Estimate of anticipated compensation.* At the time a veteran begins his course of institutional on-farm training, the anticipated compensation for productive labor for one calendar year will be developed by the veteran (the farmer-trainer) and the instructor and approved and certified by the institution and forwarded through channels, as designated by the State approval agency, to the regional office of the Veterans' Administration. Where the veteran performs part of his course on a farm under his own control, the estimate will represent the veteran's and the instructor's judgment as to the income that may be expected from productive labor on the particular farm during a calendar year in accordance with the instructions in paragraph (a) of this section. Subsistence allowance not to exceed $65 or $90 will be authorized at a rate which, when added to the monthly pro rata amount of compensation for productive labor, will not exceed the statutory limitation as provided in § 21.105. The authorization of subsistence allowance will show an ending date as of March 31 of the succeeding year.

(c) *Annual report.* On or before March 1 of each year thereafter (see paragraph (b) of this section) a report will be rendered on VA Form 7–1922, Report of Income—Institutional On-Farm Training, showing the compensation received for productive labor for the preceding calendar year and the anticipated income for the succeeding calendar year as derived from the records in the veterans' farm and home accounts and certified to by the veteran and the institution as being to the best of their knowledge and belief a correct statement in support of the veteran's claim for subsistence allowance. If the total amount of subsistence payments and compensation for productive labor for the period covered by the report exceeds the statutory limit prorated over such period, the excess rate shall be recovered by pro rata reduction of the payment rate established for the succeeding period based upon estimated income which estimate should not be less than the actual income for the preceding period. If the established rate was less than the amount authorized by statute, the deficiency will be adjusted by a single payment award. At the end of the course, a report will be made of income received since the latest prior report, and a single adjustment will be made accordingly. Any overpayment must be repaid. Reports at 4-month intervals will not be required. Subject to available entitle-

ment, the course may be completed without subsistence allowance notwithstanding the income equals or exceeds the statutory limit.

§ 21.110 *Correspondence course.* (a) No subsistence allowance will be paid a veteran enrolled only in a correspondence course. However, a veteran who is pursuing a correspondence course which is prescribed as part of a resident course requiring attendance may be paid subsistence allowance for that part of the course which requires attendance at the institution. This may apply either to resident training in a school or on the job. If a veteran is enrolled for a combination correspondence and resident course which entails attendance, subsistence allowance may be paid by the regional office that has jurisdiction over the case for only the time of actual attendance during the resident portion of the course.

(b) An eligible veteran who elects to take a course of training by correspondence only may not be enrolled prior to the effective date of the contract between the institution and the Veterans' Administration covering the specific course or the date the veteran files his formal or informal application for a Certificate of Eligibility and Entitlement, whichever is the later.

§ 21.111 *Subsistence allowance concurrently with domiciliary or hospital care.* When a veteran has been determined to be eligible for domiciliary care under existing laws and regulations, he may receive domiciliary care coincident with either vocational rehabilitation training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), or education or training under Part VIII, Veterans' Regulation 1 (a), as amended. The payment of subsistence allowance to a veteran while he is receiving domiciliary care would constitute a duplication of benefits which may not be legally authorized. A veteran hospitalized may receive subsistence allowance only when in a leave status.

§ 21.112 *Payment of subsistence allowance to persons in the military or naval service.* (a) Veterans who have re-entered active military or naval service are being furnished subsistence, medical care, uniforms, pay, etc., out of funds appropriated by the Congress. Therefore, veterans who are in active military or naval service, as distinct from those who are on training duty, are not entitled to subsistence allowance while in such service.

(b) The various types of military service are set forth below together with statements of policy governing the payment of subsistence allowance:

(1) Persons on terminal leave or hospitalized pending final discharge from the active military or naval forces may not receive subsistence allowance in any amount by reason of the specific prohibition of section 1507, Public Law 346, 78th Congress, as amended by Public Law 268, 79th Congress.

(2) Members of the Army Reserve, Naval Reserve, National Guard, ROTC, or NROTC who receive annual training where a single period of training ordinarily does not exceed 60 days, such as "summer camp" or "annual cruise":

(i) Subsistence allowance will not be authorized during such a period of training except for a concurrent period of leave granted from Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), training.

(ii) The amount of military pay received by a trainee for a period of time when he was receiving annual military training concurrently with leave under Part VIII is to be reported by the trainee and considered by the Veterans' Administration as compensation for productive labor.

(3) Members of the Army Reserve, Naval Reserve, or National Guard ordered to active duty as distinguished from training duty described in subparagraph (2) of this paragraph:

(i) Subsistence allowance will not be authorized inasmuch as such persons are being furnished subsistence, etc., out of funds appropriated by Congress.

(ii) Determinations as to whether pay and allowances are compensation for productive labor is not necessary.

(4) Members of the active military or naval establishments who have established eligibility to and are pursuing courses of education or training under Part VIII by reason of a discharge or release from a prior period of active service:

(i) Subsistence allowance will not be authorized inasmuch as such persons are being furnished subsistence, etc., out of funds appropriated by Congress.

(ii) Determination as to whether pay and allowances are compensation for productive labor is not necessary.

(5) Members of the Army Reserve, Naval Reserve, or National Guard who receive drill or flight pay for short periods of training given each week or month and members of the advanced course of NROTC or ROTC who draw commutation in lieu of subsistence while in that specialized training:

(i) The receipt of such drill pay, flight pay, or commuted rations does not preclude the payment of subsistence allowance.

(ii) Remuneration received by the trainee for such training is not compensation from productive labor.

(6) Persons receiving training under Public Law 729, 79th Congress, known as the Navy "Holloway Plan," are not entitled to receive concurrently any benefits under Part VIII.

(7) Persons receiving training as a cadet or midshipman at one of the service academies are not entitled to receive concurrently any benefits under Part VIII.

§ 21.113 *Overpayments of subsistence allowance.* Where a veteran has failed to make arrangements with the finance activity to restore or refund an outstanding overpayment of subsistence allowance, the registration and research activity may not thereafter re-enter the veteran into training. In any such instance, the registration and research activity will be responsible for giving proper notification to the veteran and the institution.

AUTHORIZATION OF SUBSISTENCE ALLOWANCE UNDER PART VII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12)

§ 21.130 *Effective dates.* (a) The effective date of an authorization of subsistence allowance on account of vocational rehabilitation shall be the date of entrance into vocational rehabilitation training or re-entrance if interrupted.

(b) All authorization actions entering veterans into vocational rehabilitation training will authorize subsistence allowance at the rate provided for a person without a dependent or dependents, unless satisfactory evidence of dependency is of record which warrants an authorization of subsistence allowance on account of dependency. If satisfactory evidence of dependency existing at the time of entrance into training is received within 1 year of the date of the request therefor, subsistence allowance payable because of the dependency will be authorized effective as of the date of entrance into training.

(c) The effective dates of an increase in subsistence allowance on account of a dependent will be the date the evidence establishing the dependency is received in the Veterans' Administration.

(d) The effective dates of reductions or discontinuances of subsistence allowance will be:

(1) In event of death, as of the date of death.

(2) In event of divorce, the date preceding the date of divorce.

(3) In case of a child, see § 21.103 (a).

(4) Interruption of course, date following date of interruption.

(5) Discontinuance of course, date following date of discontinuance.

(6) Employability determined, the first day of the third month following the month in which employability was determined.

(e) The effective dates of adjustments of subsistence allowance will be:

(1) By reason of wages or salary received while pursuing an apprentice or on-the-job training course: The first adjustment in monthly amount payable will be effective the first day of the second month following the month in which the veteran entered training; and subsequent adjustments, the first day of the second month following the month in which wages justifying the adjustment were paid.

(2) By change in disability ratings: The date reported as the effective date in change of disability rating for payment of compensation.

(3) Other adjustments: In accordance with the facts found.

§ 21.131 *Minimum payment of subsistence allowance plus compensation or other benefits.* (a) Prior to August 4, 1947, while pursuing vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), and for 2 months after his employability is determined, each veteran shall be paid the amount of subsistence allowance specified in paragraph 6 of Part VIII: *Provided,* That the minimum payment of such allowance, plus any pension or other benefit, shall be, for a person without a dependent, $105 per month;

and for a person with a dependent, $115 plus the following amounts for additional dependents; (1) $10 for one child and $7 additional for each additional child, and (2) $15 for a dependent parent.

(b) On or after August 4, 1947, while pursuing vocational rehabilitation training under Part VII and for 2 months after his employability is determined, each veteran shall be paid the amount of subsistence allowance specified in paragraph 6 of Part VIII: *Provided*, That the minimum payment of such allowance, plus any compensation or other benefit shall be:

(1) Where the service-connected disability is rated less than 30 percent for a person without a dependent, $105 per month; and for a person with a dependent, $115, plus the following amounts for additional dependents:

(i) $10 for one child and $7 additional for each additional child.

(ii) $15 for a dependant parent.

(2) Where the service-connected disability is rated 30 percent or more for a person without a dependent, $115 per month; and for a person with a dependent, $135 plus the following amounts for additional dependents:

(i) $20 for one child and $15 additional for each additional child.

(ii) $15 for a dependent parent.

§ 21.132 *Determination of minimal amounts payable.* In all cases the wife will be considered the first dependent in computing the combined minimum amount of disability compensation and subsistence allowance. Where a veteran has no wife but claims a child or children and a parent or parents as dependents, the minimum combined amount of disability pension or disability compensation (including special statutory allowances) and subsistence allowance will be computed so as to give the greater amount in each case.

§ 21.133 *Rates of subsistence allowance—(a) $75, $105, or $120 per month—full-time institutional training.* On or after April 1, 1948, the monthly amount of subsistence allowance payable to the veteran enrolled under Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), in a course of institutional training, as defined in § 21.104, will be the normal rate of $75, $105, or $120 per month, or more if necessary, to bring the sum of subsistence allowance and disability pension or disability compensation (including special statutory allowances) to the amount established as a minimum by the provisions of Public Law 338, 80th Congress. (Rates in effect prior to April 1, 1948, were $65 per month for a veteran without a dependent or $90 per month if he has a dependent or dependents.)

(b) *$65 or $90 per month.* (1) The monthly amount of subsistence allowance payable to the veteran enrolled in courses of apprentice or other on-the-job training, institutional on-farm training, and combination or cooperative courses requiring less than the normal full-time classroom instruction, will be the normal rate of $65 or $90 monthly, or more of necessary, to bring the sum of subsistence allowance and disability pension or disability compensation (including special statutory allowances) to the amount established as a minimum by the provisions of Public Law 338, 80th Congress. On or after April 1, 1948, for a veteran who pursues a part of his course in an educational institution, the extent of such training will be determined in accordance with the criteria set out in § 21.104 (a) (2), and subsistence allowance in addition to the basic rates of $65 and $90 will be payable to the extent of the appropriate fractional part (¾, ½, ¼) of the difference between the basic rates of $65 or $90 and $75, $105, or $120, whichever is applicable.

(2) (i) In accordance with his agreement to train veterans on-the-job under Part VII, the employer will report in writing to the Veterans' Administration each month the amount of wage, compensation, or other income paid by him during the month, directly or indirectly, including a reasonable value of items for family living such as food, fuel, and shelter when such is furnished by the employer-trainer, to each veteran training on the job in his establishment under this law. In the event an employer-trainer refuses or persistently fails to render a report, the responsible training officer will make personal contact with the employer-trainer in an effort to effect adjustment. If his effort fails, he will report the facts to the chief, education and training section, who will advise the employer-trainer and the trainee of the requirements of the law and that it will be necessary to remove the veteran from training in that establishment if the employer-trainer's failure to cooperate in this regard continues.

(ii) Subsistence allowance, when added to the trainee's monthly rate of wage or salary based upon the standard workweek exclusive of overtime, shall not be in excess of the standard beginning rate of wage or salary, exclusive of overtime payable to a journeymen or trained worker in the trade or occupation in which training is being given, similarly based upon the standard workweek exclusive of overtime. The trained worker or journeyman wage will be fixed as the rate of wage or salary to be attained at the end of the course, but in no case shall the period be longer than the first 4 years of the veteran's training, if an apprentice course, or 2 years, if other training on the job. This principle applies regardless of the amount of subsistence allowance which would be indicated as payable in order to achieve the minimum payments of $105 or $115, etc., specified under Public Law 338, 80th Congress.

(c) *Renunciation of disability compensation.* Where a veteran found eligible for vocational rehabilitation under Part VII renounces his right to disability compensation before or after entrance into training, he can receive only the amount of subsistence allowance authorized by paragraph 6 Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).

(d) *Reduction to zero of disability compensation.* Where the disability rating of a veteran pursuing a course under Part VII is reduced to zero, he is entitled to the minimum payment provided for veterans with disabilities rated less than 30 percent in the first proviso of paragraph 3, Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12) by Public Law 338, 80th Congress.

§ 21.134 *Specialized restorative training.* Subsistence allowance will not be authorized for restorative training.

§ 21.135 *Loans from vocational rehabilitation revolving fund.* (a) A veteran is eligible for loans authorized under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), upon establishment and certification of need for vocational rehabilitation and agreement between him and the training officer as to the course of training.

(b) No advancement from the revolving fund of more than $100 shall be made at any one time and in no case shall the total advancements exceed $100. Advancements to be made in multiples of $10 shall be made only upon a showing of necessity and then only to the extent of such need. No interest will be charged on the funds advanced, and no additional advancement shall be made to a trainee until the money previously advanced has been repaid in full, except in meritorious cases. In such cases, the officer recommending the additional advancement will submit with the application a memorandum of explanation setting forth the reasons why such advancement is recommended.

(c) The finance officer will accept the recommendation of the designated officer in the vocational rehabilitation facility unless information is of record indicating that such a recommendation should not be accepted. However, there will be no deviation from the recommendation of the designated officer in the vocational rehabilitation division without prior consultation with that officer.

CROSS REFERENCE: *Subsistence allowance concurrently with domiciliary or hospital care.* See § 21.111.

§ 21.185 *Application of the provision of Public Law 862, 80th Congress, prohibiting expenditure of Government funds for courses avocational or recreational in character—(a) Law.* Public Law 862, 80th Congress, by which funds were appropriated for the activities of the Veterans' Administration for the fiscal year 1949 contains the following proviso and limitation:

Provided, That no part of this appropriation for education and training under title II of the Servicemen's Readjustment Act, as amended, shall be expended for tuition, fees, or other charges, or for subsistence allowance, for any course elected or commenced by a veteran on or subsequent to July 1, 1948, and which is determined by the Administrator to be avocational or recreational in character. For the purpose of this proviso, education or training for the purpose of teaching a veteran to fly or related aviation courses in connection with his present or contemplated business or occupation, shall not be considered avocational or recreational.

(b) *Veterans' responsibility.* The legislative history reveals that the underlying spirit and intent of the educational and training provisions of the Servicemen's Readjustment Act is to provide an opportunity to each veteran whose education or training was interrupted by reason of his entrance into the service

to resume his education or training as a trainee and thereby aid him to attain knowledge or skill which presumably he could have attained but for his service in the armed forces. It is the intent of the law that the veteran have the right to elect his course of education or training at any approved educational or training institution at which he chooses to enroll which will accept or retain him as a student or trainee in any field or branch of knowledge which such institution finds him qualified to undertake or pursue. The prohibition of the appropriation act for 1949 is in accord with and reemphasizes the underlying spirit and intent of the educational and training provisions of the Servicemen's Readjustment Act. Therefore, veterans should not seek to pursue courses for avocational or recreational purposes but only courses which will contribute to the veteran's vocational or occupational advancement or educational objective.

(c) *Policy*—(1) *Courses of education.* A course of education elected by a veteran in an approved public or private elementary or secondary school, or an institution of higher learning, for which academic credit is awarded toward the veteran's educational objective, shall not be considered avocational or recreational in character: *Provided,* That any course listed in subparagraphs (7) and (8) of this paragraph which is provided by an approved public or private elementary or secondary school, or an institution of higher learning, shall be subject to the regulations set forth in subparagraphs (7) and (8) of this paragraph.

(2) *Courses of vocational training.* A course of vocational training elected by a veteran in an approved vocational, trade, business, or technological school shall not be considered avocational or recreational in character except those courses so determined pursuant to the provisions of subparagraphs (7) and (8) of this paragraph.

(3) *Courses of institutional-on-farm training.* A course of institutional-on-farm training which has been elected by a veteran and approved in accordance with the provisions of Public Law 377, 80th Congress, shall not be considered avocational or recreational in character.

(4) *Courses of apprenticeship training.* A course of apprenticeship training elected by a veteran in an approved training establishment shall not be considered avocational or recreational in character.

(5) *Courses of other training on the job.* A course of other training on the job elected by a veteran in a training establishment approved in accordance with the provisions of Public Law 679, 79th Congress, shall not be considered avocational or recreational in character, except those courses so determined pursuant to the provisions of subparagraphs (7) and (8) of this paragraph.

(6) *Courses of advanced flight training.* A flight instructor course, an instrument rating course, a multiengine class-rating course, or an airline transport pilot course elected by a veteran in an approved school shall not be considered avocational or recreational in character for a veteran who satisfies the regional office that he possesses a valid commercial pilot's license and the medical certificate which he is required to possess in order to obtain the license or certificate for which the course is pursued.

(7) *Elementary flight, private pilot, and commercial pilot flight courses.* An elementary flight or private pilot course or a commercial pilot course elected by a veteran in an approved school shall not be considered avocational or recreational in character if the veteran submits to the regional office (i) complete justification that such course is in connection with his present or contemplated business or occupation and (ii) satisfactory evidence that he is physically qualified to obtain the type of license which will enable him to attain his employment objective. Such justification and evidence must be submitted to and approved by the regional office prior to his entrance into training. An elementary flight, private pilot, or commercial pilot course, or part thereof, which is provided by an institution of higher learning as a voluntary elective course for which academic credit is given as partial fulfillment of the institution's standard credit-hour requirement for the veterans' degree objective, shall be subject to the provisions contained in this subparagraph and as heretofore held by the Veterans' Administration shall be considered as separate courses. Flight courses which are required by the institution as a part of the institution's standard credit-hour requirement for the veteran's degree objective shall not be considered avocational or recreational in character when the institution certifies to the Veterans' Administration that the veteran is required to pursue such course for credit in order to complete his degree requirement.

(8) *Other courses.* (i) Other courses include:

(*a*) Dancing courses; photography courses; glider courses; bar-tending courses—courses of mixology; personality-development courses; entertainment courses; all single-subject courses which are not a part of a general education or training program leading to an educational or employment objective; and all other courses which are well-known to managers of regional offices as being frequently pursued in their areas for avocational or recreational purposes.

(*b*) Music courses—instrumental and vocal; public-speaking courses; and courses in sports and athletics such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, and bowling.

NOTE: These courses shall not be construed to refer to those applied music, physical education, or public speaking courses which have always been considered and offered by institutions of higher learning for credit as an integral part of a course leading to an educational objective.

(ii) If a veteran desires to pursue any of the courses listed in subdivision (i) (*a*) and (*b*) of this subparagraph, under the provisions of Public Law 346, 78th Congress, as amended, complete justification that such course is in connection with his present or contemplated business or occupation must be submitted to and approved by the regional office prior to entrance into training.

(d) *Application of law and policy.* (1) This section does not affect any course which was commenced by a veteran prior to July 1, 1948. This section does apply to those courses referred to in paragraphs (c) (7) and (8) of this section, which are commenced on or subsequent to July 1, 1948.

(2) Each manager shall notify immediately by registered mail (return receipt requested) all schools or training establishments in his regional office area which have heretofore furnished or may hereafter desire to furnish to veterans courses referred to in paragraphs (c) (7) and (8) of this section, that the Veterans' Administration is not authorized to expend any part of its appropriation for tuition, fees, or other charges, or for subsistence allowance for any such course commenced or recommenced by a veteran on or subsequent to July 1, 1948, unless the veteran shows to the satisfaction of the Veterans' Administration that such a course is in connection with his present or contemplated business or occupation and prior to entrance into training the veteran and the school or training establishment are notified by the Veterans' Administration that it has been so determined.

(3) Determination as to whether the justification is adequate will be made by the chief, registration and research section, or his designate: *Provided,* That before final determination is made in any doubtful case or the course is finally disapproved, the veteran will be informed by the registration and research section that this justification does not appear adequate and that he may request advisement and guidance before final determination is made. In any case where advisement and guidance is provided, the advisement and guidance procedures relating to Part VIII will be applied and the opinion of the vocational adviser as to whether the course is in connection with the present or contemplated business or occupation of the veteran will be acceptable evidence for the resolution of the question. Instruction 1, Pub. Law 862, 80th Cong.)

SUBPART B—EDUCATION AND TRAINING

EDUCATION AND TRAINING UNDER PART VII, VETERANS' REGULATION 1 (a), AS AMENDED (38 U. S. C. CH. 12)

The Course of Vocational Rehabilitation

§ 21.200 *Definition.* A course of vocational rehabilitation, for purposes of Part VII, Veterans' Regulations 1 (a), as amended (38 U. S. C. ch. 12), is a course of training designed to render a veteran satisfactorily employable in the selected occupation. The course of vocational rehabilitation will not necessarily be confined to vocational training. It may consist of or include education or training in elements of a particular occupation or it may consist of or include education or training designed to correct or remove the handicap of the disability or even the disability itself or a part of it, as for example: training for the correction of speech defects, lip reading for the deafened veteran, etc.

§ 21.201 *Types of courses.* In prescribing the type of course for a particular veteran, that type or combination of types of courses will be selected which will render the veteran most satisfactorily employable in the selected occupation. For purposes of Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12) the types of courses of vocational rehabilitation are:

(a) *School course.* A course which is pursued at an institution or a part thereof devoted exclusively to educational or training purposes. These courses would include not only those offered by schools but would include also those offered by such parts of a business or industrial establishment as are operated within the plant as training situations devoted exclusively to educational or training purposes as distinguished from the regular production activities of the establishment.

(b) *Training-on-the-job course.* A course which is pursued at an establishment devoted primarily to productive agricultural, business, industrial, or professional activities rather than to giving courses of instruction. In such course, the training is pursued toward a specified occupational objective, and the learning method is primarily by being told and shown and by observing and assisting, gradually increasing the participation in the productive activities, and doing more and more of the productive work with increasing independence of instruction as the course progresses.

(c) *Combination course.* A course which is a combination of training on the job and training in school, including related instruction and/or instruction in additional skills, pursued concurrently. Three variations of combination courses are cited as follows:

(1) *Training on the job and in school.* A course which is primarily training on the job with supplemental related instruction, usually in school.

(2) *Cooperative course.* A course which is pursued primarily at a school; the objective commonly is attainable through school instruction alone, and the training-in-the-job portion of the course is strictly supplemental to the school course. This arrangement is characteristic of cooperative courses on the collegiate level and junior college level and in some technical high schools. Commonly the division of time between the school portion of the program and the training-on-the-job portion is such that the student devotes at least one-half of the total time to the school portion, and the periods in school and training on the job are relatively long such as a full term in school and an alternate term on the job, although shorter periods are also in practice. In some localities there are arrangements where part of each day is spent in school and part on the job and other arrangements where a full day is spent on the job and part time is spent in school one or more times a week. These arrangements sometimes are referred to as cooperative courses. Although the institution offering such a course is quite free to call the course a cooperative course without let or hindrance from the Veterans' Administration, this type of situation may not be considered as a cooperative course for purposes of Part VII but rather as a combination course—training on the job and in school—as in subparagraph (1) of this paragraph. Such a determination will be made despite the fact that the veteran is enrolled, at least nominally, with the school for the on-the-job-training as well as the training in school.

(3) *Institutional on-farm course.* For purposes of Part VII, a course which is primarily training on a farm combined with related group instruction both furnished by an educational institution or other training agency and which has the following constituents:

(i) Organized group instruction in agricultural and related subjects of at least 200 hours per year (not less than 8 hours in any 1 month and sufficiently more in other months to aggregate the required 200 hours per year) at an agricultural school or other educational agency.

(ii) Individual instruction on a farm by the agricultural school or other educational agency.

(iii) An individual training program designed to restore employability, carefully planned and developed by the Veterans' Administration in collaboration with the agricultural school or other educational agency to suit the needs of the individual veteran and with full consideration to:

(*a*) The size and character of the farm on which the veteran is to receive the on-farm part of his course.

(*b*) The need for making the veteran proficient, in the type of farming for which he is training—in planning, producing, marketing, farm mechanics, conservation of farm resources, conservation of food, farm financing, farm management, and the keeping of farm and home accounts.

(iv) The course, in addition, shall satisfy the requirements of either of the following:

(*a*) The course may provide for the veteran to perform part of his course on a farm under his own control, in which case:

(*1*) The course shall consist of not less than 100 hours of individual instruction per year, not less than 50 hours of which shall be on such farm (with at least two visits by the instructor to such farm each month).

(*2*) The individual instruction shall include instruction and home-study assignments in the preparation of budgets, inventories, and statements showing the production, use on the farm, and sale of crops, livestock, and livestock products.

(*3*) The individual instruction on the farm shall be given by the veteran's school instructor.

(*4*) The farm shall be under the control of the veteran (whether by ownership, lease, management agreement, or other tenure arrangement) at least until the completion of the course.

(*5*) Such farm shall be of a size and character which, together with the group instruction part of the course, will occupy the full time of the veteran, will permit instruction in all aspects of the management of a farm of the type for which the veteran is being trained and, if the veteran intends to continue operating such farm at the close of his course, will assure him a satisfactory income under normal conditions.

(*b*) The course may provide for the veteran to perform part of his course as an employee on the farm of another, in which case:

(*1*) The course on the employer-trainer's farm shall consist of not less than 50 hours of individual instruction per year by the school instructor (with at least one visit by the instructor to such farm each month).

(*2*) The individual instruction on the farm shall be given by the veteran's school instructor.

(*3*) The employer-trainer's farm shall be of a size and character which, together with the group instruction part of the course, will occupy the full time of the veteran and will permit instruction in all aspects of the management of a farm of the type for which the veteran is being trained.

(*4*) The employer-trainer shall agree to instruct the veteran in various aspects of farm management in accordance with the individual training program developed for the veteran by the Veterans' Administration in collaboration with the instructor and the employer-trainer.

(d) *Specialized restorative training course.* A course which is designed to overcome or minimize the handicap of a specific physical or mental disability, thereby restoring or aiding in restoring the employability of a disabled veteran. Examples of specialized restorative training courses are: courses in speech correction, braille reading, braille writing, lip reading, and personal adjustment.

(1) Specialized restorative training may be prescribed under part VII when all of the following conditions maintain:

(i) The handicap of the veteran's disability detrimentally affects satisfactory employability or the successful pursuit of vocational training.

(ii) The physical and mental condition of the veteran is such that specialized restorative training may be pursued satisfactorily.

(iii) There is good promise that the specialized restorative training will overcome or minimize the handicap of the veteran's disability.

(2) The pursuit of specialized restorative training on a full-time basis is usually impractical. Accordingly, such training ordinarily should be prescribed as a part of a full-time course of vocational rehabilitation and be pursued concurrently with the vocational training. However, when there is a need for specialized restorative training and there is good promise that the successful completion of such a course of training, by itself, will restore the employability of the veteran, such training may be furnished under Part VII as a full-time course, in accordance with § 21.202. Specialized restorative training may be furnished on a part-time basis if it is determined that such part-time course is essential to accomplish rehabilitation by enabling the veteran to attain or retain employment in an occupation suitable to his ability, aptitudes, and interests.

(3) When it is found that an employment objective cannot be specified because of certain conditions of disability, the veteran may be furnished, as a beginning or preliminary part of an overall course of vocational rehabilitation under Part VII, such course of specialized restorative training as will give good promise of rendering the veteran capable of pursuing vocational training. This will be done with the view to determining, immediately after the successful completion of the specialized restorative training, an employment objective and the vocational part of the course of vocational rehabilitation.

(4) Payment of subsistence allowance to veterans pursuing specialized restorative training is based upon the following:

(i) When specialized restorative training is prescribed as a part of a full-time course of vocational rehabilitation and is pursued concurrently with the vocational training, the full subsistence allowance is payable, if otherwise in order.

(ii) When specialized restorative training is prescribed as a beginning or preliminary part of an over-all course of vocational rehabilitation, in order to render a veteran capable of pursuing vocational training, provided the veteran is considered to be in full-time training and full subsistence allowance is payable, if otherwise in order.

(iii) When specialized restorative training is prescribed for the purpose of enabling the veteran to retain employment in the occupation in which he is currently employed, subsistence allowance may be paid in an amount not to exceed the difference between the veteran's current monthly salary or wage and the salary or wage which assuredly will be paid him upon completion of the prescribed course of specialized restorative training. In order for any subsistence allowance to be paid, there must be full assurance that the higher salary or wage will be realized by the veteran upon completion of the course.

(iv) When specialized training is prescribed as the total course of vocational rehabilitation for the purpose of enabling a veteran to retain employment in the occupation in which he is currently employed and there will be no advancement in salary upon completion of the training, no subsistence allowance is paid.

(e) *Sheltered workshop course.* A course of training on the job or combination of training on the job and supplemental instruction which is usually provided through a charitable, religious, educational, governmental, or philanthropic organization which is not operated for the purpose of profit but for the primary purpose of providing vocational training, rehabilitation, and employment for the physically and/or mentally handicapped. Such a course of vocational rehabilitation provides the disabled veteran with training under conditions in which the trainee is relatively sheltered from competition with the able-bodied and from requirements to meet production standards which would be a handicap to the restoration of employability in ordinary situations. A sheltered workshop course will be prescribed only in those cases in which the veteran's employability cannot be restored through pursuit of a course of training in a school or training-on-the-job establishment under ordinary conditions, but training under sheltered workshop conditions gives good promise of maximum results in the particular case or promise of the best results possible in the particular case.

(f) *Correspondence course.* A course conducted by mail, consisting of one or more written lesson assignments furnished by a school and requiring submittal of written lessons by the trainee. Such lessons usually are corrected and graded by the school and returned to the trainee. For obvious reasons a correspondence course generally is not a satisfactory method of accomplishing the vocational rehabilitation of a disabled veteran under the provisions of the law and Veterans' Administration policies and procedures. Accordingly, correspondence courses are to be avoided: *Provided however,* That a correspondence course may be prescribed when such a course is necessary to supplement training on the job; or when in the rare case there is clear indication that the veteran possesses such characteristics of ability to pursue the course under the conditions imposed by correspondence instruction and that he has those characteristics of industriousness and perseverance as to give good promise of successful pursuit of correspondence instruction and when it is established that the successful pursuit of the correspondence course definitely will accomplish rehabilitation, the correspondence course is the only practicable means for accomplishing the necessary training for the objective which has been chosen to restore employability, and it is clear that the veteran will be able to pursue the correspondence course as a full-time training program subject to what is considered a full-time training program as determined in § 21.202.

(g) *Independent instructor course.* A course which is pursued with an instructor who, independently of jurisdiction or direction of a training institution or establishment, furnishes and conducts the course. An independent instructor course will be prescribed only when, due to the nature of the veteran's disability, pursuit of the course of vocational rehabilitation at a training institution or establishment is impracticable. Such courses shall be planned carefully by the Veterans' Administration in collaboration with the instructor, shall be as fully definite as, and shall contain all the elements contained in the individual training program of any veteran pursuing an institutional course—in school or on the job.

§ 21.202 *Devotion of full time to training.* (a) Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), provides for payment of subsistence allowance in nothing less than full amount, except as provided in § 21.201 (d). Accordingly, training under Part VII should constitute the veteran's principal and full-time endeavor. It is expected that the veteran will devote his undivided attention and effort to the course of vocational rehabilitation and that the course will require the major part of each school or workday or at least such part thereof as is commonly applied to training or employment in the particular occupation for which the veteran is in training: *Provided,* That under particular conditions specialized restorative training may be provided on a part-time basis as set forth in § 21.201 (d).

(b) The actual time in terms of hours which a veteran-trainee will be expected to devote to his training may be varied to conform to his physical capacity for pursuing the course. If employability may be restored through the pursuit of a course of training but, based upon the opinion of the assigned medical consultant, it is determined that the maximum time that should be applied by the veteran to such course is less than that stated in paragraph (a) of this section, the veteran may be inducted into a reduced-time training program as provided in either subparagraph (1) or (2) of this paragraph:

(1) Based upon the opinion of the assigned medical consultant, it is determined that the amount of time to be devoted by the veteran to the training program is as great as the veteran's disability will ever permit. Such course will be regarded as a full-time course in the individual case and may be approved: *Provided,* That it can be completed in the statutory period and provided further that no appropriate course to which the trainee can apply a greater time is available for use under the circumstances in the case.

(2) Based upon the opinion of the assigned medical consultant, it is determined that, due to the nature of the trainee's disability, he may not devote as many hours to training as does the ordinary trainee; and (i) the veteran's individual training program requires as many hours per day for training as, based upon the opinion of the assigned medical consultant, it is determined that his disability will permit; (ii) there is good promise that work tolerance will increase more rapidly if the veteran is engaged in the training activities for a suitable employment objective than if he were not engaged in such activities; and (iii) the hours of such reduced-time training program will be increased gradually, coincident with the increase in the veteran's work tolerance, until he is pursuing a normal training program. In each case, expert medical advice should be sought before any increase in the number of hours of training time is made.

(c) Training on the reduced-time basis provided for as in paragraph (b) (2) of this section shall not be continued beyond 3 months unless work tolerance has increased and the time devoted to training has been correspondingly increased as contemplated in paragraph (b) of this section.

§ 21.203 *Part-time training.* Specialized restorative training may be prescribed as a part-time course under the conditions set forth in § 21.201 (d).

§ 21.204 *Maximum duration of the course.* The maximum duration of a course of vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), may not exceed the period necessary to restore employability nor may a veteran be

placed into or be continued in training at a time more than 9 years after the official termination of World War II. The maximum duration of the course may not exceed a period of 4 years except under conditions set forth in § 21.206.

§ 21.205 *Adjusting the duration of the course.* (a) Although Certificate B, VA Form 7–1902f, provides for indicating the estimated length of the course, that fact will not control the length of the course. It is the function and responsibility of the education and training section to prescribe and provide the course of training necessary to restore employability in the occupation which has been determined by the advisement and guidance section. The duration of the course will be determined by the education and training section.

(b) The length of the course may be that indicated on certificate B or it may be for a longer or shorter period depending upon the actual needs in the case. Generally, the initial determination of the length of the course should be a minimum length. If vocational rehabilitation cannot be effected within that period, the period can be adjusted on the basis of facts which develop as the veteran proceeds with his course. If on the same basis of facts developed as the course proceeds the employability can be restored within a shorter period than initially planned, adjustment to shorten the course should be made.

§ 21.206 *Courses in excess of four years.* The purpose of vocational rehabilitation is to restore employability lost by virtue of a handicap due to service-incurred disability. The original intent of Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), to accomplish the restoration of employability within 4 years was not materially altered by Public Law 268, 79th Congress, December 28, 1945.

(a) *Conditions for approval of training in excess of four years.* (1) Training in excess of 4 years may be considered necessary to fulfill the purpose of vocational rehabilitation and may be approved only when:

(i) The vocational handicap resulting from the veteran's disablement is such that no course of training which does not exceed 4 years will restore him to employability consistent with his disability and aptitudes.

(ii) Circumstances beyond the control of the veteran necessitate the extension beyond a period of 4 years of a training program which was originally planned for completion within 4 years.

(iii) The vocational handicap resulting from the veteran's disablement is such that a course of training which does not exceed 4 years will restore him to employability consistent with his disability but because of special circumstances in the individual case of the veteran, it is determined through comprehensive advisement procedure that an objective requiring training in excess of 4 years is the only suitable objective as indicated by:

(*a*) The background and experience of the veteran being of such nature as to offer conclusive evidence that the objective is one which the veteran had previously set for himself.

(*b*) The veterans having completed, prior to his separation from active duty in the armed forces, not less than 24 standard semester hours or their equivalent of a course of education definitely identified as preparatory for or leading to the designated objective. To be so identified, the portion of the course which the veteran has completed must have included unit subjects commonly accepted by professional schools as prerequisite to professional study for the particular occupational objective.

(*c*) The quality of the work completed by the veteran being such as to warrant the presumption that he will be successful in attaining the objective (to justify a favorable finding under this subdivision the work completed in those subjects which relate directly to the proposed objective shall have been of sufficiently high quality to promise acceptance of the veteran as a student in the particular desired professional school or type of school.)

(*d*) The results of selected tests which not only confirm the choice of objective but indicate high probability of success in attaining that objective.

(2) It is evident that a veteran applying for vocational rehabilitation for whom it would be necessary to provide all preparatory, preprofessional and professional courses would not meet the requirements of subparagraph (1) (iii) (*b*) and (*c*) of this paragraph. If such a veteran meets the requirements of subparagraph (1) (iii) (*a*) and (*d*) of this paragraph but is unable to fulfill the requirements of subparagraph (1) (iii) (*b*) and (*c*) of this paragraph, he may defer his induction into training under Part VII until such time as he, independently of the Veterans' Administration, has pursued a sufficient portion of a course to enable him to attain the designated objective within a total period of 4 years or less. A veteran contemplating such a course of action must be informed that the entire question of need for vocational rehabilitation will be reconsidered at such time as he applies for induction into training under Part VII. He should also be informed of the possibility that, while he is pursuing training independently of the Veterans' Administration, his disability rating may be reduced to less than a compensable degree, with attendant loss of entitlement for training under Part VII.

(3) When a veteran is already pursuing a course of vocational rehabilitation training under Part VII and, at the time of the original advisement, expressed a desire to pursue a course of training for an occupational objective requiring a period of training exceeding 4 years but was inducted into training for an intermediate and closely related objective in the same occupational field not requiring training in excess of 4 years and the veteran now requests a reconsideration of his case under the policies herein stated with a view to changing his objective to the one originally desired, the revaluation procedure will be applied, taking into consideration the provisions set forth in subparagraph (1) (iii) (*a*), (*b*), (*c*), and (*d*) of this paragraph.

(4) A veteran already pursuing a course of education or training under Part VIII, who applies for and is found entitled to vocational rehabilitation under Part VII, and who does not meet the conditions set forth in subparagraph (1) (iii) of this paragraph, but who does meet the requirements of subparagraph (1) (iii) (*a*) and (*d*) of this paragraph and is unable to fulfill the requirements of subparagraph (1) (iii) (*b*) and (*c*) of this paragraph may interrupt his education or training with the knowledge of the Veterans' Administration and after pursuing, independently of the Veterans' Administration, a sufficient portion of a course to enable him to attain the designated objective within a total period of 4 years or less may be inducted into training under Part VII, subject to reconsideration of the question of need. A veteran contemplating such a course of action must be informed that the entire question of need for vocational rehabilitation will be reconsidered at such time as he re-applies for induction into training under Part VII. He should also be informed of the possibility that, while he is pursuing training independently of the Veterans' Administration, his disability rating may be reduced to less than a compensable degree, with attendant loss of entitlement for training under Part VII.

(b) *Training on the job in excess of four years.* In no case will paragraph (a) (1) (iii) of this section be applicable to on-the-job training courses which require more than 4 years. If, through application of the advisement procedure, it is indicated that a veteran, who does not meet the conditions set forth in paragraph (a) (1) (i) of this section should be rehabilitated through training on the job for an employment objective ordinarily requiring more than 4 years of training, he may be inducted into the course: *Provided:*

(1) That sufficient credit is allowed for knowledge, skills, or experience previously acquired by the particular veteran to enable him to complete the course without exceeding a total of 4 years of training under Part VII or under both parts, or

(2) That where a veteran has not acquired knowledge, skills, or experience which may be credited toward completion of the course or where the knowledge, skills, or experience acquired by a veteran are insufficient for the veteran to be allowed enough credit to enable him to complete the course in 4 years or less, there is clear indication that he will be employable and rehabilitated after completing a period of training not exceeding 4 years under Part VII or under both parts. Such determination is based on the fact that the law requires the restoration of employability rather than the completion of a course which satisfies fully the requirements for journeyman status, and in the case of any veteran inducted into training under this subparagraph employability will be considered as having been restored and thus the veteran will be considered rehabilitated inasmuch as the veteran will be in employ-

ment at a living wage in the occupation for which training was prescribed and provided, with the probability of continued employment in the same occupation as evidenced by satisfactory pursuit of the course and the usual increases in earnings. Where a veteran is to be inducted into training under the provisions of this subparagraph, there shall be inserted on VA Form 7–1902f, in the appropriate space, the employment objective (Dictionary of Occupational Titles) which was selected as a result of the application of the advisement procedures followed by "four years" in parentheses. The following statement will be inserted on VA Form 7–1902f, Certificate B: "There is clear indication that this veteran will be employable and will be rehabilitated after pursuing training for the above objective for a period not exceeding an aggregate of 48 months, under Part VII or under both parts, or less, depending upon the veteran's previous experience and training, and the veteran has a definite understanding of this statement and its effect."

(c) *Authority for approval of courses in excess of four years.* (1) Under the conditions set forth in paragraph (a) (1) (i), (ii), and (iii) of this section, managers of regional offices are hereby authorized to approve or disapprove courses of training in excess of 4 years, basing such action upon the recommendation of a committee composed of the chief, vocational rehabilitation and education division, the chief, education and training section, and the chief, advisement and guidance section, or their assistants. Each case will be prepared and presented to the committee by that section of the vocational rehabilitation and education division having responsibility for the case at the time that the request for approval of training in excess of 4 years is to be presented. The presentation will contain all pertinent information including an indication of whether paragraph (a) (1) (i), (ii), or (iii) of this section is the basis on which the recommendation is made and a clear showing of the facts which establish the case under the particular subdivision. The committee will submit a written recommendation to the manager setting forth the facts and consideration upon which such recommendation is based, accompanied by the rehabilitation and education file of the veteran and the endorsement or comments of each member of the committee indicating his concurrence or nonconcurrence. The manager of the regional office will make the final determination in each case arising under paragraph (a) (1) (i), (ii), and (iii) of this section, subject, of course, to the veteran's right of appeal. Upon conclusion of the action in each case, the recommendation and related papers will be filed in the veteran's rehabilitation and education file, and a notation of the action taken will be made on certificate B.

(2) Subject to other applicable provisions of the law, any training which is afforded in excess of 4 years as provided herein will be at the expense of the government and subsistence allowance is payable.

(3) The committee will maintain a precedent file of the actions taken in various types of cases.

§ 21.207 *Repetition of a course.* (a) A veteran having completed a course under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. Ch. 12), according to the standards and practices of the institution and having subsequently failed to pass an examination to qualify for license to practice a profession or trade is not entitled to enroll in and pursue again at the expense of the Government the course which he has already completed, except in the unusual case, where, to accomplish rehabilitation, the necessity to repeat the course is imperative. It would appear a remote possibility that the veteran who has already once completed the course must necessarily repeat the course in order to be considered rehabilitated.

(b) An eligible veteran who has completed a course of training under Part VII may pursue a review course under that part provided the review course is a separate and distinct course specifically organized and established as a review course, and, therefore, does not constitute a repetition of a course which the trainee has already completed. Such a course to be recognized as a review course commonly may be identified by the common characteristics of such a course; namely, concentration of content, intensified application to the pursuit, and the short period required for the course compared to the time required for the primary course. Representative of courses in this category are bar review courses for preparing veterans who have already completed the prescribed course in law for taking the bar examination.

(c) Inasmuch as the purpose of vocational rehabilitation is to restore employability, a Part VII trainee may be authorized not only to pursue such a course for the purpose stated but to repeat a review course where such repetition is imperatively necessary for the purpose of vocational rehabilitation. Under the particular methods sometimes employed by licensing boards, it occasionally happens that applicants fail to obtain licensure despite the attainment of grades in the examination which would ordinarily be considered satisfactory if the grading of examinations were based upon the normal distribution of scores or other commonly accepted methods and a definite percentage were established as a criterion for failure. The Veterans' Administration, therefore, should permit a veteran in training under Part VII to repeat a review course when there is good promise that such repetition will enable him to pass the examination with such standing as will insure attainment of licensure. If there is poor promise that to repeat the course would insure licensure, repeating the course should be denied and the case should be regarded as requiring revaluation in accordance with appropriate Veterans' Administration Vocational Rehabilitation and Education procedures. In such cases, the occupational objective may be changed to an objective consistent with type and amount of training already accomplished, as for example, the employment objective of a veteran training to become a lawyer might be changed to law clerk and the veteran be declared rehabilitated.

(d) The determination as to the number of repetitions of review courses which may be approved in the case of a particular Part VII veteran will be based upon the foregoing which provides for the merits of the individual case to govern.

Selecting the Training Facility

§ 21.210 *Basis for selection.* The training officer will select a satisfactory training facility for each Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), veteran assigned to him based upon the requirements of the prescribed course modified by the assets, qualifications, and limitations of the particular veteran including those imposed by his disability.

§ 21.211 *Factors to be considered in selecting the facility—(a) Criteria which must be met by the training facility.* Trainees are to be placed only in training facilities with which there is an agreement or contract and which:

(1) Have space, equipment, instructional material, and instructor personnel adequate in kind, quality, and amount for the desired training in the particular case.

(2) Have fully accepted the obligation to give training in the significant constituent parts of the training program which have been prepared for the particular veteran.

(3) Will modify the program, when necessary, to compensate for the limitations resulting from the veteran's particular disability or other characteristics.

(4) Provide courses which meet the customary requirements in the locality for employment in the particular occupation in which training is given and which meet the requirements for license or permit to practice the occupation, if such is required.

(5) Provide continuous training without interruption except for normal holidays and vacation periods for all veteran trainees placed with them.

(6) Provide daytime instruction for the trainee unless instruction in necessary subjects cannot be obtained in the locality during the working hours of the day.

(7) Organize training into definite instructional steps or units which will permit and necessitate progressive training.

(8) Encourage rapid progress of each trainee rather than limit progress of such individual by the progress of the group.

(9) Will not, during the period of training, continue trainees on productive operations beyond the point of efficient training.

(10) Indicate willingness to cooperate with the Veterans' Administration in the supervision of the trainee by the Veterans' Administration training officer and by executing report forms covering the trainee's attendance, performance, and progress in training.

(b) *Additional considerations.* In selecting the facility, the preference of the veteran and the accessibility of the fa-

cility to the veteran will be given due consideration.

(c) *Ownership or control by relatives.* (1) A training-on-the-job establishment in which the veteran or a close family relative of the veteran has control ordinarily will not be considered an appropriate training facility for training that veteran on the job if another facility in which such control does not exist, and which is satisfactory, is equally available. A facility in which the veteran or a close family relative holds such control shall not be selected, unless it is shown beyond any reasonable doubt that the social and economic relationship of teacher to the veteran, who will be the pupil, will be satisfactory for the efficient promotion of learning activities.

(2) The possibility of abuse and fraud developing in such cases is self-evident. If the veteran trainee is in control, there is possibility that he may influence his employees to his own advantage. Where a close family relative is in control, collusion is possible. This has long been recognized under similar circumstances as is evidenced by the fact that insurance companies will not permit physicians to examine members of their own families for life insurance; that many school systems will not permit employment of teachers who are related to members of the board; that personnel officers customarily ask whether or not an applicant for employment is related to the person who has submitted a recommendation or testimonial, etc. In the face of the recognized possibility of abuses in situations of this nature, it is obvious that enrollment for training with close relatives or where the veteran is in control must be subjected to more than ordinary scrutiny by the Veterans Administration. On the other hand, it must be recognized that in many cases the training opportunity offered will be bona fide and of excellent quality. Accordingly, the way must be left open for such cases.

The Individual Training Program

§ 21.212 *Preparation and content.* (a) Prior to or immediately upon the induction into training of each Part VII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), veteran, there shall be prepared for the veteran by the training officer, in collaboration with the training institution a detailed course of training, the individual training program, which is designed to qualify the veteran for the selected occupation. It will be an individual training program written in such definite terms and consisting of elements so clearly appropriate to the chosen employment objective that the successful completion of the individual training program will in itself establish the fact of satisfactory employability in the chosen objective. The individual training program shall contain no subject matter which does not clearly contribute to rendering the trainee satisfactorily employable in the chosen occupation and shall contemplate only such minimum length of training period as is necessary.

(b) The preparation of the individual training program is based upon existence of a complete or master training program. The complete or master training program is a listing, in appropriate sequence, of all of the major units of work which together constitute the particular occupation and under each major unit of work a listing of all of those things which have to be done and known in order to be competent in that unit of the occupation. The individual training program will be the complete or master training program for the selected occupation, appropriately modified by crossing off any items which, for good and proper reasons, are not intended to be included in the individual training program of the particular veteran.

(c) The individual training program, in order to take care of the peculiar requirements of the veteran may include items over and above the complete training program for a particular occupation, for example, a complete training program for a lawyer commonly would not include the subject stenography, but for the purposes of a particular veteran, stenography might be necessary and might properly be made a part of his individual training program. The individual training program will be recorded on the VA Form of the 7–1905 series provided for that purpose. The original will be placed in a file set up and maintained within the education and training section where the record will receive periodic postings of the veteran's progress and serve the other purposes which are indicated in § 21.247.

§ 21.213 *Individual training program for a school course.* (a) When a school course has been prescribed for a particular veteran and the school which has been selected offers a well-established curriculum or course which without modification will qualify the particular veteran for the selected occupation, that course commonly will be the individual training program for the veteran.

(b) When the particular veteran does not require training in certain unit subjects or courses in the established course of the school because of previous training or experience, these unit subjects or courses will be excluded from the individual training program.

(c) When the school does not offer an established course that will qualify the particular veteran for the selected occupation but offers unit subjects or courses which may be organized into a course that will qualify the veteran for the selected occupation, those unit subjects or courses, when carefully organized in collaboration with the school and the veteran, will become the individual training program for the veteran.

(d) The individual training program for a school course shall include:

(1) The title of the specific job objective or course and the appropriate Dictionary of Occupational Titles code number.

(2) The required unit subjects or courses grouped, in appropriate sequence, for each semester, school term, or school year.

(3) A statement of the major and the minor unit courses which are required together with the credit hour values for each and the total credits required for graduation or completion of the course; and indicating for each unit course whether it is a required major or minor or whether it is an elective; and showing also the number of credits in elective courses which may properly be included in the over-all course and in each school term.

(4) The credit values for each unit subject or course in terms of semester hours, quarter hours, or other unit employed by the institution.

(5) Any extra requirements for the satisfactory completion of the school course for which no credit is given, such as a special comprehensive examination or a thesis in addition to those required for the unit subjects or courses, should be noted and made part of the individual training program.

§ 21.214 *Individual training program for training on the job.* (a) When a course of training on the job has been prescribed for a particular veteran and the establishment which has been selected offers a fully adequate course of training which, without modification, will qualify the veteran for the selected occupation, that course commonly will be the individual training program for the veteran.

(b) When the veteran does not require training in certain units of work in the established course of the establishment because of previous training or experience, those units shall be excluded from the individual training program.

(c) When the particular needs of the veteran or when the work schedule of the establishment makes it necessary, the established training program should be modified or rearranged to fit the circumstances: *Provided,* Such modification or rearrangement will not eliminate any unit of instruction deemed essential to satisfactory employability in the selected occupation.

(d) When the selected training-on-the-job establishment does not already offer a fully adequate course of training for the selected occupation, the training officer will make a job analysis (see § 21.216) to obtain the information necessary for the preparation of a complete or master training program for use in developing the individual training program.

(e) The individual training program for a training-on-the-job course shall include:

(1) The title of the specific job objective and the appropriate Dictionary of Occupational Titles code number.

(2) The major kinds of work which together make up the chosen occupation and under each of these types the units of instruction listed in appropriate sequence in terms of the separate elements of work tasks, job operations, processes, skills, knowledges, and occupational information which together constitute each major element of the program.

(3) The estimated training time or estimated maximum and minimum training time required for completion of each unit of instruction in clock hours. Note: The maximum time will be that estimated to be the greatest amount of time which any trainee, whose progress can be rated as satisfactory, should require to com-

plete the unit of instruction. The minimum time will be that estimated to be the least amount of time during which a trainee could be expected to complete the unit of instruction.

(4) The length of the course.

(5) The wage or salary to be paid at the beginning of the training program, at each successive step in the program, and the minimum entrance wage or salary paid by the establishment to employees already trained in the kind of work for which the veteran is to be trained.

Any special examination, progress tests, etc., to indicate satisfactory completion of units of instruction as well as any license, certificate, or diploma required of a qualified workman will be noted and made a part of the individual training program.

§ 21.215 *Individual training program for combination school and training-on-the-job courses.* When a combination of school and training on the job has been prescribed, the individual training program shall include the unit subjects or unit courses for the school portion of the course recorded on VA Form 7–1905b and the units of instruction for the training-on-the-job portion of the course recorded on VA Form 7–1905a.

§ 21.216 *Job analysis defined.* For the purposes of Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), job analysis will consist of ascertaining by observation and study, and recording for future use, the important items of information relating to the performance of a specific job. It is the process of ascertaining the work tasks which comprise the job as it exists, the skills, knowledges, abilities, and responsibilities which the worker must acquire or assume for successful performance of the tasks and of the physical and mental demands of the job as a whole.

Inducting the Veteran Into Training

§ 21.220 *Conditions to be met before induction into training.* Regional managers are authorized to induct a veteran into training in an institution or other establishment for the purpose of pursuing a course of vocational rehabilitation which has been prescribed in accordance with the provisions of Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12). (See §§ 21.40 and 21.701 (a).)

(a) When vocational advisement has been rendered, including the completion of the vocational advisement record, with the recording of all pertinent information, the selection of the employment objective, and the execution of VA Form 7–1902f (Certificate B) to show the concurrence of the veteran, the medical adviser or consultant, the vocational adviser, the chief, advisement and guidance section, or designate, and the chief, education and training section, or designate.

(b) When there has been obtained and is waiting to be utilized a training facility which, on the basis of adequate investigation by the training facilities section, is clearly qualified as to space, equipment, instructional material and personnel to give the required course and has agreed to cooperate fully with the Veterans' Administration in accomplishing records of the trainee's attendance, performance and progress in training and in the case of training on the job, to report to the Veterans' Adminstration monthly as required by the law, any payments of money to the trainee.

(c) When an adequate individual training program for the veteran as required by § 21.212 has been approved and recorded on the appropriate VA Form 7–1905.

(d) When there is no circumstance known to have intervened to change the determination concurred in by the designated medical officer that training is medically feasible and that it is practicable to provide the appropriate training to restore employability.

§ 21.221 *Additional conditions to be met prior to induction into training in a school.* Veteran trainees will not be entered into training in a school under Part VII, Veteran's Regulation 1 (a), as amended (38 U. S. C. ch. 12), until a contract or a memorandum agreement with the school has been negotiated by the training facilities section. Where a veteran's interests and rights under Part VII will be jeopardized by withholding him from training because of the absence of a contract and the contract cannot be completed immediately and there is no question of the merits of the school being adequate and indications are that the contract eventually will be completed, the chief, education and training section, will make urgent request upon the chief, training facilities section, to effect immediately the necessary memorandum agreement to permit the induction of the veteran. In no event will a veteran be inducted into training in a school without a written memorandum agreement.

§ 21.222 *Additional conditions to be met prior to induction into training on the job.* When the prescribed course or portion of the course of vocational rehabilitation which the veteran is to enter consists of training on the job, in addition to the conditions cited in § 21.220, the following conditions must be met prior to the induction of the veteran into training on the job:

(a) The training establishment has agreed to pay the veteran for the entire period of training or any part of the period of training a salary or wage rate commensurate with the value of the veteran's productive labor and not less than that customarily paid to a non-veteran trainee in the same or similar training situation.

(b) The veteran clearly understands and is agreeable to the Veterans' Administration policy which provides that when the combined income from any wages or other compensation paid by the employer-trainer to the trainee during the month, directly or indirectly, and the subsistence allowance exceeds the standard, minimum entrance wage paid by the employer-trainer to a journeyman or a trained worker in the same occupation and in the same establishment, the subsistence allowance will be reduced in that amount which the combined income exceeds the journeyman or trained worker rate.

(c) The salary or wage rate for productive labor incident to training is not less than that prescribed by the Fair Labor Standards Act of 1938, Public Law 718, 75th Congress, except under the conditions set forth in § 21.223 (a).

§ 21.223 *Authority to induct veterans into training on the job at subminimum wage rates.* (a) The Fair Labor Standards Act of 1938, Public Law 718, 75th Congress, requires an employer, as a statutory obligation, to pay to any person, not specifically exempt, who is suffered or permitted to work in commerce or in the production of goods for commerce or in some occupation necessary to such production, without regard to other source of income, a minimum wage of 40¢ per hour, or a subminimum hourly wage rate which the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor may approve for handicapped workers under section 14 of the act. Similarly, the Walsh-Healey Public Contracts Act, Public Law 846, 74th Congress, requires that all persons employed by a contractor on work subject thereto be paid not less than the applicable minimum wages as determined by the Secretary of Labor. When the hours of employment-training exceed 40 in any one workweek (or 8 in any 1 day, if the work performed is subject to the Public Contracts Act), employees not otherwise exempt must be paid not less than time and one-half the regular rate of pay for all hours worked in excess of 40 in any workweek. Employees are covered by the act not only when they are producing goods for commerce but also when they are engaged in an occupation necessary to the production of goods for commerce. This means that many more employees are covered by the act than the average person would at first suppose. If, for example, the trainee handles or works on goods, any part of which flows in commerce, he is deemed to be in a covered occupation during the workweeks in which such work is performed, even though his production may be comparatively insubstantial. However, if the trainee works entirely on scrap material which is segregated and no part of which flows into interstate commerce, he is not covered by the act. Chiefs of vocational rehabilitation and education divisions should clear questions of coverage in all doubtful cases with the Wage and Hour and Public Contracts Divisions' Regional Directors before induction into training.

(b) When a prospective employer-trainer, as a condition precedent to his acceptance of a Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12) trainee for training on the job, indicates he will not meet the minimum wage requirements of the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act, the use of such training facility will not be favorably considered unless:

(1) Other opportunities for the desired training neither exist nor are available in the veteran's community.

(2) The trainee's disabilities preclude initial entrance into training at the minimum wage otherwise applicable.

(c) A trainee may not be inducted at subminimum wage rates into training on the job subject to the act unless and until a certificate has first been issued permitting such induction and prescribing a rate to be paid. In the absence of such certificate, the employer-trainer is liable to the penalties prescribed in the act including the possibility of an employee's suit under section 16 (b) of the act. Such suit, when sustained, makes the employer-trainer liable for the amount of all unpaid minimum wages and unpaid overtime compensation due, and an additional equal amount as liquidated damages. The subsistence allowance paid the trainee by the Veterans' Administration may not be considered as applying to or offsetting the amount that will be due the worker from the employer-trainer.

(d) When, after investigation, the conditions in paragraph (b) of this section are found to exist, the chief, vocational rehabilitation division, is authorized to approve induction into training on the job at subminimum rates. To accomplish this purpose, the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, has delegated to chiefs, vocational rehabilitation and education divisions, authority to issue to a prospective employer-trainer a temporary certificate for each trainee valid for a period of not longer than 3 months from the date of issuance, authorizing the training on the job of a trainee at an hourly wage rate not less than 75 percent of the applicable minimum wage unless after investigation a different wage rate appears to be clearly justified. The chief, vocational rehabilitation and education division, is responsible also for making all revisions in the temporary certificate during this 3-months' period, i. e., he may issue a superseding certificate revising the rate but he may not extend the date of expiration beyond the original 90-day period. In exceptional and unusual cases, the chief, vocational rehabilitation and education division, may authorize induction at lower rates. A certificate, however, should not necessarily be issued at a rate as low as 75 percent of the minimum. In each case the rate should be set at a figure designed adequately to reflect the individual trainee's earning capacity. The language of the act is held to preclude any idea of total exemption from paying wages. The chief, vocational rehabilitation and education division, may experience difficulty in determining the rate to be set in the certificate since in many cases there will be no previous earning record for the trainee and hence no objective criteria available for judging the trainee's productivity. The chief will have to use his best judgment in such cases, leaving opportunity to adjust the rate upward or downward as later facts may indicate. As stated above, no part of the subsistence allowance paid to the trainee by the Veterans' Administration may be considered as wages due the trainee. This situation should be made clear to the employer-trainer at the time of placement.

(e) Payments made on a piece-rate basis to a trainee in training on the job must be at the piece rate paid nonhandicapped employees in the same occupation but in no case less than the hourly wage rate set forth in the certificate.

(f) The chiefs, vocational rehabilitation and education divisions or the employees acting in that capacity, will authenticate special certificates.

§ 21.224 *Release of information.* (a) When, for the purpose of making or carrying out arrangements for the training or employment of a veteran, it is necessary to release information regarding the disability or other matters to a person or establishment requested by the Veterans' Administration to provide training or employment for the veteran, the information directly pertinent to the purpose may be released to the appropriate party, provided the veteran authorizes such release by signing the following statement:

I hereby authorize the Veterans' Administration to release to any person, institution, or establishment such information regarding me, including that relating to my disability, as is considered by the Veterans' Administration officials to be needed by such persons or establishments for the purpose of developing or carrying out arrangements for my training or employment.

(b) Ordinarily, the veteran will have authorized the release of information regarding disability or other matters by signing VA Form 1902, Vocational Advisement Record, which contains the above-quoted statement under item F.1, page 4. However, where the veteran objected to the release of such information at the time of advisement and the statement was crossed out on VA Form 1902, information regarding his disability or other matters may not be released unless the veteran reconsiders and signs the statement. Care must be taken not to reveal any confidential information which has no significance to the veteran's training in terms of enabling the training institution better to serve the veteran in the pursuit of his course. With the release of any information which the trainee has authorized, there shall be included special notice that the information is strictly confidential, is furnished solely for it to serve the purpose of enabling the training institution better to serve the veteran in the pursuit of his course, and under no circumstances is to be released to any other parties.

Furnishing Supplies

§ 21.230 *Definition.* As referred to in §§ 21.230 to 21.244, the term "supplies" will include books, tools, supplies, equipment, etc.

§ 21.231 *Legal basis.* The furnishing of supplies for training purposes is authorized under section 3 of Public Law 16, 78th Congress, as amended.

§ 21.232 *Authority.* Subject to the limitations set forth in §§ 21.230 to 21.244, regional managers are authorized to furnish, through contract with the training institution or through direct purchase in accordance with current regulations governing the procurement of and accounting for trainee's property, supplies of such kind and in such minimum amounts as are necessary to the satisfactory pursuit of a course of vocational rehabilitation in a particular institution.

§ 21.233 *Prevention of abuse.* The furnishing of supplies is fraught with possibilities of marked abuse. Accordingly, the entire matter of furnishing such articles is to be so administered as to avoid and prevent abuses. Care is to be exercised to make certain that articles will not furnish to the veteran-trainee which duplicate those which have been previously furnished by the Veterans' Administration or which otherwise are in his possession. There should be indication by the regional office that the trainee's folder has been consulted to determine whether articles have been previously furnished. The provisions of the law and the instructions authorizing the furnishing of supplies are not to be construed as authorization for furnishing supplies except under the most careful checks as to what is required by the training institution of all trainees. Special attention should be given to detect a tendency on the part of any institution or establishment to pad its lists of supplies because the supplies may be paid for by the Government. It is to be emphasized and always borne in mind that the trainee is not to be allowed to determine what supplies will be furnished. An understanding of the law and Veterans' Administration policy on this point and cooperation on the part of the institution or establishment should be encouraged and developed to the end that the institution or establishment will approve for the trainee only those items which it requires other students or trainees to personally possess in order to pursue the training. The training officer will be held responsible for determining, in individual cases, that the list of supplies to be furnished to the trainee by the Veterans' Administration has been determined by responsible officials of the institution rather than by the trainee himself and has been determined on the basis of actual training needs. The chief, education and training section, and supervising training officers will give due supervisory attention to this element of administering the program.

§ 21.234 *General limitations.* (a) The kinds, quality, and amount of supplies that may be furnished to any trainee will be limited to those commonly required by the institution to be owned personally by other trainees not under Veterans' Administration jurisdiction pursuing the same course in the particular institution. Articles which are commonly on hand as equipment of the training institution for use of all students, trainees, or employees are not to be regarded as supplies required to be owned by trainees and will not be furnished. (See § 21.241 (b) on furnishing special equipment necessary because of the nature of the trainee's disability.)

(b) In those instances where supplies are available in several prices, grades, or qualities, the Veterans' Administration will furnish only articles of such quality or grade as the training institution requires all trainees to have, whether veteran or nonveteran. When it is clear to the regional manager that such quality

or grade is greater than necessary for purposes of a particular trainee, he is authorized to limit the quality or grade to that which will meet the needs of the particular case.

(c) All the supplies necessary for pursuit of a particular course of training will not be furnished at the beginning of the course. Rather the supplies will be furnished as their need becomes clearly evident and imminent. On the other hand, arrangements must be made whereby supplies will be available to the trainee when they are needed.

(d) The Veterans' Administration is obligated only to furnish serviceable equipment. There is no requirement that all items furnished to a trainee shall be new or of any particular manufacturer's brand. There is the obligation that any article furnished shall be in excellent working condition and of such type and quality as the needs of the course demand. Consideration should be given to the issuance of items which are in stock before placing an order for new equipment.

(e) The Veterans' Administration will not replace at Government expense articles which have been issued to a trainee and which are lost, stolen, misplaced, or damaged beyond repair when it is determined by the regional manager that such loss or damage occurred through fault on the part of the trainee, including lack of due care. If any such articles which are indispensable to further pursuit of the course are lost, misplaced, or damaged beyond repair and it is determined by the regional manager that the loss or damage was due to fault on the part of the trainee, it will be necessary for the trainee to effect replacement of the articles. If the trainee is willing but financially unable to effect the replacement, an advancement for this purpose may be made from the vocational rehabilitation revolving fund subject to the provisions of § 21.253 (b). Where a trainee refuses to effect replacement of articles indispensable to further training after the manager has determined that the loss was due to fault on the part of the trainee, it will be necessary to discontinue training for lack of cooperation.

(f) The Veterans' Administration will not reimburse a trainee who personally buys supplies. Payment for supplies is made to the training institution or to the vendor from whom they are purchased by the Veterans' Administration. If the institution chooses to return to the veteran the amounts charged him and paid by him so that the charges by the training institution stand as an unpaid obligation of the Veterans' Administration to the institution, payment may be made if otherwise in order.

(g) When a particular article is furnished for use in more than one subject and the same article is required for use in other subjects or in another quarter or semester or school year, the article furnished will be made to serve for all such requirements and will not be duplicated for such purpose at government expense.

§ 21.235 *Authority to furnish supplies to trainees in school training.* (a) Under the authority set forth in § 21.232 and subject to the limitations contained in §§ 21.230 to 21.244 the regional manager is authorized to furnish a veteran pursuing a course of vocational rehabilitation in a school with supplies required by the school to be personally owned by every other student pursuing the same course.

(b) It is the general policy to have schools furnish supplies wherever practicable inasmuch as such practice will facilitate service to the veteran. If the school cannot be induced to furnish supplies, they will be furnished by the Veterans' Administration in the manner prescribed in this section for furnishing supplies for training on the job.

§ 21.236 *Authority to furnish supplies to trainees in training on the job.* Under the authority set forth in § 21.232 and subject to the limitations contained in §§ 21.230 to 21.244, the regional manager may furnish a veteran pursuing a course of vocational rehabilitation on the job with necessary supplies when the aggregate cost of the articles is not in excess of $100. When the aggregate cost of the articles will be in excess of $100, they may be furnished under one of the following conditions:

(a) When the items needed appear on an approved list in Veterans' Administration vocational rehabilitation and education procedures for the trade or occupation for which the trainee is pursuing training. If an item required by the training establishment is not on the approved list, the regional office may substitute that item for a corresponding item on the approved list provided the item substituted will serve the same general purpose and the cost is less than or approximates the usual cost of the item for which substitution is made.

(b) When a request to furnish supplies in excess of $100 has been submitted to the appropriate branch office and the approval of the branch office has been obtained. Each request to the branch office for authority to furnish supplies in excess of $100 must be supported by a statement including at least the following:

(1) Employment objective and code.

(2) Indication of the brand, catalog number, and the price of each item for which, or the equivalent of which, approval is requested (to facilitate identifying the item desired).

(3) An itemized list of supplies so far furnished or on order for the trainee and the cost.

(4) A definite statement that the institution or establishment requires all the requested items to be personally owned by all students taking the same course.

§ 21.237 *Furnishing supplies to veterans pursuing residency courses in hospitals.* (a) Since residency courses are entered upon only by qualified physicians and since qualified physicians, in pursuit of their medical courses and/or in their general practice, ordinarily own the common diagnostic instruments and certain of the texts applicable to general medicine, only books and equipment which are peculiar to the specialty for which the physician-veteran is preparing himself will ordinarily be furnished.

(b) For the doctor-veteran pursuing a residency course in a hospital, the Veterans' Administration may pay for such supplies necessary and required for training purposes, as are certified by the physician or physicians responsible for giving the course as being required to be personally possessed by every physician, veteran, or nonveteran pursuing the same course: *Provided:*

(1) That such books, supplies, and equipment are not furnished or loaned by the institution.

(2) That in no case will any book or item of equipment be paid for when such article is already in the possession of the veteran.

Adequate assurance will be obtained that the veteran does not own or have available for his use any item requested.

§ 21.238 *Furnishing supplies for training on the job following school training.* When a veteran's course consists of training in a school followed by a period of training on the job following completion of the school portion of his course and it is clear that supplies not previously furnished are going to be needed at the beginning of the on-the-job portion of the course, steps shall be taken sufficiently in advance to insure that the supplies will be available when needed. In no event, however, are the supplies to be issued prior to induction into training on the job or prior to a clear indication of their need as provided in § 21.234 (c).

§ 21.239 *Furnishing tools.* (a) In the furnishing of tools, the Veterans' Administration will not furnish a full set of tools such as a trained worker would acquire over a period of years, or such as to enable him to pursue employment after completion of the course, but rather there will be furnished the trainee, as needed, those tools normally required to pursue the course of training.

(b) The Veterans' Administration will not furnish such items as shop tools or shop equipment which are normally provided by the establishment. Tools and equipment in this category are those usually provided by training establishments to be used by their employees when needed and are not required to be the personal property of each.

(c) With particular reference to that training which consists of or includes training on the veteran's farm or other type of establishment owned or controlled by the veteran, it is to be noted that the veteran's farm or establishment, in order to be acceptable as a place of training, must be equipped to give the training as well as otherwise qualified. Accordingly, any supplies furnished in such cases will be limited to classes of items which are furnished veterans pursuing courses at any other training-on-the-job establishment. This will limit the supplies to be furnished to those hand tools and instruments which are required for the teaching of special skills and will preclude furnishing supplies which are commonly on hand as part of the farm equipment or specialized equipment for particular crops or activities.

§ 21.240 *Furnishing clothing.* (a) One of the purposes of the subsistence

allowance is to enable the trainee to provide himself with clothing. Therefore, items which are worn in lieu of ordinary clothing will not be classed as articles of training equipment or training supplies. Consequently, gymnasium clothing, laboratory coats and trousers, nurses or technicians uniforms, school or military uniforms, coveralls, and other similar articles will not be provided, notwithstanding the fact that it may be a requirement of the training establishment that clothing of a certain type or style shall be worn by all students, trainees, or employees. Protective articles such as laboratory aprons, rubber gloves, etc., which are worn primarily for the purpose of protecting the wearer from physical harm as distinguished from protecting his personal clothing may be furnished when they are required for all students taking the same course.

(b) There are many schools, such as military academies, in which veterans may be trained and in which veteran-trainees would be required to wear clothing of a particular style or pattern. Such clothing might constitute the major portion of the wardrobe of the veteran and if the Government were to furnish the required clothing it would mean that the Government would pay for all of the outer clothing such a trainee would wear. Similarly, there are veterans training on the job as policemen, firemen, automobile mechanics, and many other occupations in which clothing of a particular type and style is a requirement of the training institution. The furnishing of such clothing in such cases would mean that the Government would pay for all of the work clothes of trainees. Obviously, it is necessary to draw a line between items which will be furnished and items which will not be furnished. Wherever such a line is drawn, there are bound to be borderline cases which are denied, and which action may be difficult to defend under the general policy that the Veterans' Administration will furnish those items for training which are required by the institution for all students pursuing the same course. The practicable place to draw the line with respect to furnishing clothing is between items which are not worn in lieu of other clothing and which because of the nature of the course are necessary to protect the health or well-being of the individual and those which are worn in the place of the veteran's principal attire.

(c) Gymnasium pants and gymnasium shoes are worn in lieu of other clothing. When such items are worn, the veteran's street clothes are hanging in a locker and at such time they are not subject to wear. If the student is a physical education major, it is presumed that his street clothes will be saved from wear for a great portion of every day just as the automobile mechanic's clothes are protected while he is attired in the uniform coveralls required by the garage in which he is being trained. Inasmuch as gymnasium clothing is less expensive than street clothing, the veteran whose training course permits him to wear such clothing actually has an economic advantage over the veteran whose courses require him to wear dress clothes at all times.

§ 21.241 *Furnishing special items.* (a) Musical instruments, cameras and their accessories, tennis rackets, golf clubs, and similar items which are susceptible of use for personal purposes and any other expensive items will not be furnished unless indispensable to particular major or minor unit courses essential to accomplishing the employment objective and the regional manager has satisfied himself that the veteran possesses sufficient interest, aptitude, and talent to promise success in the occupational objective. These latter conditions will be considered to have been met when approved advisement procedures have been followed and the course has been prescribed on that basis. Such items will not be furnished for elective courses.

(b) Special equipment such as fountain pens, desk sets, reading lamps, brief cases, typewriters, etc., ordinarily will not be furnished. Braille writers and recording machines for blinded veterans ordinarily will be furnished under Public Law 309, 78th Congress. Under exceptional circumstances, however, such items over and above those required by the training institution to be owned personally by all students pursuing the same course may be furnished to trainees under Part VII, subject to the prior approval of the appropriate branch office when a bona fide need is established because of a permanent physical disability of such a character that the equipment is necessary to enable the trainee to undertake and pursue successfully a course of vocational rehabilitation. When any item is furnished a veteran under the provisions of this paragraph, a complete record of each such item will be placed in the veteran's claims folder, also in the training subfolder, as a basis for avoiding the furnishing, in the future, of items which have already been supplied. The record of each item will include identifying data such as name of article, type, model, serial number, size, name of manufacturer, etc. Items not required for training purposes but necessary to overcome the handicap of blindness from a general viewpoint should be requisitioned under Public Law 309, 78th Congress. Branch offices may submit doubtful cases to the director, education and training service, central office, for a determination.

§ 21.242 *Furnishing supplies after completion of vocational rehabilitation.* Supplies which have been approved for a veteran pursuing a course of vocational rehabilitation but which could not be furnished prior to the completion of the course, due to the inability to obtain delivery, may be furnished after completion of the course provided there is clear indication that action was taken early in the veteran's pursuit of the course to obtain the supplies and provided that the veteran is actually pursuing employment in the occupation for which he was trained.

§ 21.243 *Recovery of training supplies.* (a) Supplies furnished a trainee are deemed released to him and should not be marked to indicate ownership by the United States. A trainee will not be required to return expendable supplies nor will he be required to return nonexpendable supplies or to pay the reasonable value thereof in the event he fails to complete his course of vocational rehabilitation unless it be determined that his failure to do so was because of fault on his part and in making such determination the trainee will be given the benefit of every reasonable doubt. Determination of the presence or absence of fault will be made by the chief, vocational rehabilitation and education division, subject to approval or disapproval by the regional manager, and the findings will be filed in the training folder.

(b) In cases which the manager finds to be meritorious, even though the veteran may have been at fault, such items as are being used by the veteran in bona fide employment need not be recovered. Similarly a veteran may be allowed to retain items which have already served their purposes as implements of training and the retention of which would improve the veteran's chance for making practical use of knowledge or skills acquired from the training courses completed, as for example, a text book used in a unit course he has successfully completed or a set of drafting instruments furnished for drafting courses which he has finished.

(c) The veteran will be deemed to be at fault if his training is discontinued:

(1) When he withdraws from the institution at the request of the institution; or

(2) When he abandons his training without prior or concurrent notice to the Veterans' Administration; or

(3) Following consistently unsatisfactory reports of conduct or progress; or

(4) When the failure to complete the course is due to his negligence or misconduct.

(d) Supplies which have been recovered from trainees are delivered to the custody of the supply officer. Every effort shall be made to utilize recovered supplies in the custody of the supply officer.

Supervision of the Individual Trainee

§ 21.245 *General.* Once a veteran has been inducted into training, it is indispensable to the administration of the individual case that the Veterans' Administration continuously know the status of the veteran's training situation. The process of finding out the status of the training situation, the process of effecting necessary adjustments in the training situation, and the process of maintaining adequate records of the facts in each case constitute supervision.

§ 21.246 *Purpose of supervision.* The purpose of supervision is to ascertain whether the training situation of a veteran in training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), is satisfactory, whether the trainee is maintaining satisfactory conduct with respect to attendance, deportment and progress in his course, and whether the course of training continues to promise restoration of the veteran's employability.

§ 21.247 *Records of supervision.* The recorded facts concerning the training situation as determined through supervision of the trainee by the training officer are the chief basis upon which the Veterans' Administration judges the progress of the trainee and determines that the training situation of each trainee is satisfactory or that adjustment of the training situation is necessary to meet the needs of the individual veteran. The recorded facts are also the basis upon which the chief of the section can evaluate the performance of the individual training officer and thus be enabled to determine the efficiency of the Veterans' Administration service in administering the affairs of the individual trainee. Records of supervision must be used to improve the program in each individual case and also the vocational rehabilitation program as a whole. They must be studied and acted upon with a view to making the most of the training officer and the entire education and training section more effective.

§ 21.248 *Function of the training officer in supervision.* (a) In discharging his responsibility of supervising the trainee, the training officer, from the beginning of the training, shall do all he can to encourage, on the part of the trainee, development of an attitude of confidence and self-reliance which will facilitate the veteran's progress through the course of training to a status of satisfactory employability. In his duties as supervisor of the training of the trainee, the training officer, to the extent practicable, shall inform and assist the trainee in all matters affecting his training, be continually on the alert for circumstances preventing proper progress, and exert every effort to remove any disadvantageous factors, thus promoting the rehabilitation and employability of the veteran.

(b) Supervision of the trainee by the training officer will proceed on the basis of intimate and adequate knowledge of the training situation.

§ 21.249 *Frequency of supervision.* (a) Although frequency of supervision is of less importance than its quality and adequacy, there must be at all times such frequency, quality, and adequacy of supervision as to indicate in objective terms whether the current status of the veteran's training situation is satisfactory or unsatisfactory as to each of the elements noted in § 21.248. The report of supervision will be recorded on the appropriate VA Forms of the 7–1905 series.

(b) Under ordinary circumstances, a veteran in training on the job and the employer-trainer should be contacted directly by the training officer once every 30 days and more often when necessary. Where it is known that without question the training situation of a particular trainee is thoroughly satisfactory, supervision visits may be at less frequent intervals. However, a report on each trainee in such a training situation, showing clearly the basis upon which it is known that without question the training situation of a particular veteran is thoroughly satisfactory, shall be made by the training officer on VA Form 7–1905d, Special Report of Training, whenever a supervision visit is not made on the scheduled date for the visit.

§ 21.250 *Adjustments in the training situation.* As training progresses, there should be continued consciousness on the part of the training officer of the fact that each trainee, upon completion of his training program, must become employable in the occupation for which he is training, and the training officer shall ask himself repeatedly and often whether the trainee is progressing satisfactorily toward rehabilitation and whether he will be definitely employable upon completion of the course which he is pursuing.

(a) Whenever it becomes clear that completion of the course will not render the veteran employable, corrective action should be undertaken to the end that the veteran's training assuredly will render him employable or it is definitely determined that he cannot be rendered employable through any course of vocational rehabilitation which is available.

(b) When a trainee indicates dissatisfaction with his course of vocational rehabilitation or when the training institution recommends a change or discontinuance of the veteran's course, the training officer should contact the instructor or faculty adviser of the veteran and arrange personal discussion with the trainee and/or an appropriate representative of the institution, individually or jointly, and effect, if possible, a satisfactory correction of the difficulty through a minor adjustment in the course or an adjustment on the part of trainee as to attitude, performance, etc. If the dissatisfaction or difficulty cannot be corrected through a minor adjustment, all pertinent facts concerning the situation, together with appropriate recommendations, should be submitted to the chief, education and training section. When the seriousness of the situation so indicates, the chief, education and training section, should bring the case to the attention of the chief, vocational rehabilitation and education division. The training officer should give the institution all possible cooperation toward accomplishing the adjustment of the veteran to the training situation and should assist the trainer or instructor in understanding the need for, and in adopting, any special procedures which may be necessary due to the particular disability of the veteran.

§ 21.252 *Change of employment objective.* When a trainee indicates to the training officer a desire to change his employment objective, the training officer should discuss the matter with the trainee and determine the merits of the case. If it is clear that the change of employment objective should not be made, the training officer should endeavor to effect a satisfactory understanding with the trainee. If the trainee persists in his expressed desire, the training officer should advise the veteran to make his request in a written statement to the Veterans' Administration describing the change desired and the reasons for desiring it. The request should be given by the trainee to his training officer, but if not so given, the request should be referred to the training officer upon receipt. The training officer should then present to the chief, education and training section, or designate, a written statement of the merits of the case together with his recommendation of action to be taken. The chief will determine whether a modification of the course without a change of employment objective will make the course satisfactory to the veteran without affecting adversely the adequacy of the course to accomplish rehabilitation. If such a modification does not make the course satisfactory, the case should be referred for revaluation in accordance with applicable vocational rehabilitation and education instructions.

§ 21.253 *Additional considerations incident to supervision.* When there comes to the attention of the training officer a trainee who needs advice or assistance in matters concerning other services of Veterans' Administration and which affect indirectly the success of vocational rehabilitation, the training officer shall render such assistance as is appropriate and feasible. Any information the training officer gives or services he renders shall be based upon and in accordance with the appropriate following paragraphs and applicable provisions of Veterans' Administration regulations.

(a) *Medical treatment of beneficiaries receiving vocational rehabilitation.* (1) Beneficiaries receiving vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12) will be entitled to such treatment as is medically determined necessary to prevent interruption of their training. Treatment under this principle may be given not only for disease or injury for which the training was authorized but for any intercurrent condition, regardless of its relation to former military or naval service.

(i) Treatment medically determined necessary to prevent interruption of training and authorized in a hospital or outpatient unit, including dental service and furnishing of prosthetic and orthopedic appliances, will be rendered whenever feasible in field stations of the Veterans' Administration. Other Federal hospitals allocated to certain regional offices and centers with regional office activities may be utilized when a bed in a hospital under direct and exclusive jurisdiction of the Veterans' Administration is not feasibly available. Admission to a civilian hospital may be authorized in a medical emergency when travel of the ill or injured trainees to a Federal hospital is interdicted. When the condition of a trainee will not permit of his reporting at an outpatient unit of the Veterans' Administration, his treatment by a designated physician or private physician of his community may be authorized in accordance with prescribed procedure. Civilian hospitals under contract will be utilized whenever practicable, but those not under contract may be used if necessitated, at fees in accordance with the Veterans' Administration schedule of fees. The handling of prescriptions, supplying of medicines, and surgical

dressings, etc., will be as provided for outpatients in general.

(ii) The field station having vocational rehabilitation activities and supervision of the ill or injured trainee will ordinarily furnish his treatment as provided above. But if the trainee's place of residence is closer to another field station, request may be made upon the latter station to conduct the medical service, subject to this limitation: That if such service is transferred to a field station having no regional office activities, the trainee's condition must be such as will permit him to report at such station, since the station will have no list of designated physicians and cannot authorize home treatment.

(iii) Dental service necessary to prevent interruption of training will ordinarily comprehend relief of pain by extraction of teeth, treatment of dental abscess, etc. When treatment other than emergency is required, the prior approval of the medical director will be obtained by submitting a report of the dental examination, information concerning the training objective, and the unexpired time of the approved training program.

(iv) Transportation incident to hospitalization or outpatient treatment of trainees will be supplied by the field station that is to render it, subject to the provisions of § 17.100 (g) of this chapter relative to residence of outpatients in the city or town, or in proximity to the city or town, where the service is to be furnished.

(2) It is intended that managers shall be permitted to provide medical treatment not only for the purpose of preventing any discontinuance of instruction whatsoever but also for the purpose of hastening a trainee's return to training when a cessation of instruction has become necessary because of injury or illness. Accordingly, medical treatment may be authorized for a reasonable period to enable the trainee to return to and continue his course of rehabilitation or to permit of a determination of whether or not interruption of training will be necessary. Under such conditions, sick leave will be granted under the provisions of § 21.262 (a), and the trainee will be continued in training status throughout the period of authorized leave. A trainee in receipt of medical services under these conditions will not be removed from training status without coordinating with the medical division so that appropriate arrangements may be made to cover the future status of the case from the standpoint of medical treatment.

(b) *Loans from vocational rehabilitation revolving fund.* (1) Paragraph 8, Part VII, as amended, authorizes to be appropriated the sum of $3,000,000 to be utilized by the Veterans' Administration, in accordance with rules and regulations to be prescribed by the Administrator of Veterans Affairs, as a revolving fund for the purpose of making advancements, not exceeding $100 in any case, to veterans commencing or undertaking courses of vocational rehabilitation under this act.

(2) No advancement of more than $100 shall be made at any one time and in no case shall the total advancements exceed $100. Advancements to be made in multiples of $10 shall be made only upon a showing of necessity and then only to the extent of such need. No interest will be charged on the funds advanced, and no additional advancement shall be made to a trainee until the money previously advanced has been repaid in full, except in meritorious cases. In such cases, the officer recommending the additional advancement will submit with the application a memorandum of explanation setting forth the reasons why such advancement is recommended.

(3) Advancements from the revolving fund will be made in accordance with Veterans' Administration vocational rehabilitation and education procedures.

(c) *Use of VA Form 4–572, request for change of address.* The training officer shall inform each trainee that, if the trainee changes his address he must execute VA Form 4–572, Request for Change of Address, and give it to his training officer or send it to the Veterans' Administration regional office having jurisdiction, in order that compensation and subsistence checks may be sent to the new address and when the veteran's new address will be in a territory under the jurisdiction of another regional office in order that the claims folder may be transferred to the appropriate regional office.

§ 21.254 *Effect of strikes on status of Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainees.* (a) If a trainee voluntarily absents himself from training to participate in strike activities against his place of training, he shall be offered training in another adequate training institution and if he accepts, he may be continued in training status for such period as may be covered by ordinary leave which may be granted under the provisions of § 21.261 (a). If the trainee refuses training in another training institution, discontinuance shall be immediate.

(b) A trainee who, although not participating in the strike activities, is prevented from pursuing training because of a strike against his place of training, shall be placed in another suitable place of training insofar as possible whenever it is apparent that the strike will not be resolved within a reasonable period of time. When another suitable place of training cannot be arranged or when it is apparent that the strike will be resolved within a reasonable length of time, the trainee may be granted such ordinary leave as is provided in § 21.261 (a). If the provisions of § 21.261 (a) are found to be inadequate in the individual case, consideration may be given to granting hardship leave under the terms of § 21.-262 (b). It is to be noted that leave under § 21.262 (b) is granted only when all accrued ordinary leave has been exhausted and when failure to grant leave would cause personal hardship to the trainee.

§ 21.255 *Continuing Part VII trainees in institutions, approval of which under Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), has been withdrawn.* When the State approving agency revokes its approval under Part VIII of an institution at which a Part VII, Veterans Regulation 1 (a), as amended, (38 U. S. C. ch. 12), trainee is pursuing a course of vocational rehabilitation, it will be necessary to determine whether the training situation at the institution is such as to warrant continuing the Part VII trainee in it. The mere fact that approval has been revoked by the State approving agency in itself does not constitute basis for withdrawing a Part VII trainee from training. However, the institution should be carefully reconsidered by the Veterans' Administration to the extent of determining whether the conditions for which approval was withdrawn are of such character as to make the institution unacceptable under Veterans' Administration standards for making contracts or agreements or otherwise improper for use for purposes of Part VII training.

Leaves of Absence

§ 21.260 *Introduction.* Pursuant to the provisions of paragraph 7, Public Law 16, as amended, a veteran who is following a course of vocational rehabilitation under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), may be granted leave of absence where such leave will not materially interfere with the pursuit of his course. Leaves of absence will be approved under the conditions set forth in §§ 21.261 to 21.265.

§ 21.261 *Ordinary leave.* Ordinary leave will accrue at the rate of 2½ days per month during the entire time a veteran is in training status, including that time during which he is on approved leave of absence. Leave will not be accumulated to an amount in excess of 30 days. Accumulated leave will not be forfeited through interruption of training status and may be carried over from one period of training to another and from one 12-successive-months period of training to another.

(a) *Granting of ordinary leave.* Managers are authorized to approve ordinary leave of absence which will not exceed the amount of leave accumulated to the credit of the trainee and which in no case will exceed an aggregate of 30 days in each 12 successive months of training: *Provided,* That the granting of such leave will not, in the opinion of the manager, materially interfere with the pursuit of the prescribed course.

(b) *Charging of ordinary leave.* Approved absences covering a period less than the standard school or workweek of the training institution or establishment will be charged at the rate of 1 day for each school or working day of absence from the institution. Approved absences covering a period of one calendar week or more will be charged at the rate of 5 days for each seven consecutive days of absence. No charge against leave will be made for absences on those days within a period of training on which the school or training establishment grants total exemption from attendance to all students or trainees similarly circumstanced. For veterans enrolled in educational institutions, this will include school holidays and short intermissions between successive terms or periods of

instruction within the ordinary school year, provided that the veteran was enrolled for the two successive terms.

(c) *Credit for leave accumulated under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).* When a veteran who is pursuing a course of education or training under Part VIII is found entitled to vocational rehabilitation under Part VII, such leave which has accumulated to his credit under Part VIII shall be credited to his ordinary leave upon induction into training under Part VII.

§ 21.262 *Additional leave under exceptional circumstances.* Managers are authorized to approve leave of absence in addition to that allowable by § 21.261 under the following conditions, provided the manager is reasonably certain that the veteran will return to the pursuit of his course within the period for which the manager is authorized to grant leave.

(a) *Personal illness.* When required by reason of bona fide illness of the trainee, sick leave, without regard to ordinary leave, may be granted, not to exceed a total of 30 days in each 12 successive months of training status beginning with the date of the veteran's entrance into training. Sick leave will be charged to include all of the elapsed time from the beginning of absence from training until the veteran returns to training, including Saturdays, Sundays, and holidays.

(b) *Personal hardship.* (1) After all accrued ordinary leave has been exhausted, additional leave, not to exceed 30 days in each 12 successive months of training status beginning with the date of the veteran's entrance into training, may be granted for reasons other than personal illness, when failure to do so would cause personal hardship to the trainee. Satisfactory reasons under this category might include illness or death in the trainee's immediate family or other compelling conditions beyond the veteran's control, which, in the opinion of the manager, make it necessary that the trainee be permitted to absent himself from training.

(2) Leave in addition to the sick leave permitted by paragraph (a) of this section not to exceed 30 days in each 12 successive months of training status beginning with the date of the veteran's entrance into training, and without regard to ordinary leave, may be granted when it could not be foreseen that the illness would require more than 30 days of absence and when the manager is of the opinion that training will be resumed within the additional 30-day period. However, it should be borne in mind that the basic 30 days' sick leave provided for in paragraph (a) of this section generally should be a sufficient allowance for personal illness and that a greater period of absence from training would interfere with the course.

(3) In no case shall any combination of leave under subparagraphs (1) and (2) of this paragraph be granted in excess of 30 days during each 12 successive months of training. Such leave will be charged to include all of the elapsed time from the beginning of absence from training to the return of the veteran to training, including Saturdays, Sundays, and holidays.

§ 21.263 *Maximum leave allowable.* Leave in excess of that authorized under §§ 21.261 and 21.262 will not be approved. Whenever, in an individual case, it becomes evident to the manager that the veteran will not be able to resume his training course upon the expiration of the period of leave he is authorized to approve under this instruction, the veteran will be removed from training status.

§ 21.264 *Leave following effective date of rehabilitation.* Inasmuch as veteran is not considered to be pursuing a course of vocational rehabilitation during the two months following the effective date of rehabilitation, leave may not be granted during that period even though subsistence is paid. In no case shall the date of rehabilitation be extended beyond the date of the completion of the veteran's course of training for the purposes of allowing the veteran to exhaust his accumulated ordinary leave.

§ 21.265 *Unauthorized absences.* Trainees should be instructed that they will be expected to apply for and obtain approval for leave of absence in advance. However, when a veteran has absented himself from his place of training under conditions which would make his obtaining advance approval from the Veterans' Administration impracticable and when the responsible officials of the training establishment and the manager agree that the absence has not materially interfered with the course of training, the manager is authorized to excuse the absence and to make charges against the veteran's leave in accordance with the policy stated above. When such absence from training is not satisfactorily explained, the manager will take such action as is deemed necessary, including forfeiture of subsistence allowance for the period of absence.

Travel of veterans

§ 21.266 *Intraregional travel of trainees.* Managers are authorized to effect the transportation of veterans under their jurisdiction at Government expense within the regional territory, when the manager or the chief, vocational rehabilitation and education division, has determined that such travel is necessary in the discharge of the Government's obligation in the case, and the veteran is instructed to perform the travel for any of the following purposes:

(a) To report to the chosen training facility for the purpose of starting training.

(b) To return to his bona fide home from the place of training when training cannot be provided for a period of 30 calendar days or more, provided transportation from his home to the place of training was at Government expense; this will include summer vacation periods when training is not available but will not include periods when suitable training is available but the veteran elects to return to his home. Where a trainee is authorized to travel at Veterans' Administration expense under the authority of this paragraph, return transportation from the trainee's home to the place of training for the purpose of continuing training also may be authorized.

(c) To return from the place of training, upon discontinuance by the Veterans' Administration of the course of vocational rehabilitation for any reason except fraud on the part of the veteran, to the point from which the veteran was transported at Veterans' Administration expense—if a veteran voluntarily discontinues training, travel at Veterans' Administration expense to return from the place of training to the point from which the veteran was transported may not be authorized except where the voluntary discontinuance (not mere interruption) of training by the veteran is determined to be for reasons beyond the veteran's control.

(d) To report to a place of prearranged satisfactory employment upon the completion of vocational rehabilitation for the purpose of beginning work.

(e) To return to his bona fide home from the place of training when, upon completion of vocational rehabilitation, satisfactory employment is not available.

§ 21.267 *Interregional transfers for training.* (a) *Induction into a facility outside the regional area.* Managers are authorized to effect the transfer of veterans for training under Part VII to the jurisdiction of other regional offices within the limits of the continental United States at Government expense when any such transfer is necessary for the purposes of the Veterans' Administration in accomplishing vocational rehabilitation in the chosen employment objective. Such transfer at Government expense will be limited to the nearest satisfactory training facility, except that where regional territorial lines do not coincide with State border lines, transfers may be effected at Government expense to induct the veteran into training in any satisfactory training facility located within the State of the veteran's residence, despite the existence of satisfactory training facilities within the regional territory. Interregional transfers which involve travel at Government expense between points within the continental limits of the United States and points within the insular possessions and territories will be effected only upon the prior approval of the deputy administrator having jurisdiction over the regional territory from which the transfer is requested. Interregional transfers to or from the Philippine Islands at Government expense will be effected only upon the prior approval of central office.

(b) *Transfers not at Government expense.* The transfer of a veteran for his own convenience, to enable him to attend a training facility other than one located in the State or the regional territory of his residence, will be acquiesced in by managers of regional offices upon the written request of the veteran: *Provided, however,* That any such transfer will not be at the expense of the Government. When there is a satisfactory training facility within such regional territory or State of the veteran's residence or when there is no satisfactory training facility within such regional territory or State

but such facility is available in an adjoining territory, and the veteran desires induction into training elsewhere because of personal preference, as for example, his desire to obtain particular climatic conditions or his wish to attend a particular university, the transfer will be considered as being for the convenience of the veteran. If, after a training facility has been selected for a veteran, a transfer of the veteran for his own convenience is effected and an additional transfer to a satisfactory training facility is necessitated thereby, the expense of such additional transfer which will be paid by the Government will not be in excess of the expense which would have been necessary to transfer the veteran to the originally selected training facility.

§ 21.268 *Interregional transfers when training cannot be provided for 30 calendar days or more.* (a) When training cannot be provided for a period of 30 calendar days or more, managers are authorized to effect the transfer, at Government expense, of a trainee from the place of training to the trainee's bona fide home within the regional office territory from which he was transported at Government expense for the purpose of pursuing training; this will include summer vacation periods when training is not available but will not include periods when suitable training is available but the veteran elects to return to his home.

(b) When a trainee is authorized to travel to his home at Government expense under the authority of paragraph (a) of this section, return transportation at Veterans' Administration expense, from the trainee's home to the place of training for the purpose of continuing training, also may be authorized.

§ 21.269 *Interregional transfers of veterans to return to points from which transported.* Managers are authorized to effect the transfer of veterans from the place of training, upon discontinuance by the Veterans' Administration of the course of vocational rehabilitation for any reason except fraud on the part of the veteran, to the point from which the veteran was transported at Veterans' Administration expense to pursue training. If a veteran voluntarily discontinues training, travel at Veterans' Administration expense to return from the place of training to the point from which the veteran was transported may not be authorized except where the voluntary discontinuance (not mere interruption) of training by the veteran is determined to be for reasons beyond the veteran's control.

§ 21.270 *Interregional transfers of rehabilitated veterans to accept prearranged employment.* Managers are authorized to effect the transfer of veterans at Government expense within the limits of the continental United States for the purpose of enabling a veteran to report to a place of prearranged satisfactory employment to begin work when, upon completion of the course of vocational rehabilitation, there is no satisfactory opportunity for employment in the occupation for which the veteran was trained within the regional territory of the veteran's residence or when such a transfer will be to the definite advantage of the Government.

§ 21.271 *Interregional transfers of rehabilitated veterans when satisfactory employment is unavailable.* Managers are authorized to effect the transfer of veterans at Government expense for the purpose of returning a veteran from the place of training to his bona fide home within the regional office territory from which he was transported at Government expense for the purpose of pursuing training when, upon completion of vocational rehabilitation, satisfactory employment is unavailable.

§ 21.272 *Transfer for a qualifying examination.* Managers are authorized to effect the transportation at Government expense of a veteran from the place of training to, and return from, a place at which an examination is administered in the trade or profession for which he has been trained, when the passing of such an examination is necessary to practice the trade or profession for which he has been trained; *Provided,* That the transportation shall be limited to points within the State in which the veteran has pursued his training or if the veteran returns to the State from which he was sent to pursue training, he may be sent at Government expense to a place within that State to take the examination, and if there is more than one place at which the examination may be taken, the transportation shall be limited to the nearest place.

§ 21.273 *Authority to approve travel.* Managers are authorized to approve necessary travel at Government expense and to issue transportation, meal, and lodging requests in accordance with the provisions of Veterans' Administration Regulations for the purpose of carrying out the provision of §§ 21.266 to 21.273. The chief, vocational rehabilitation and education division, is authorized to act for the manager in exercising any authorities stated in this section.

§ 21.274 *Authorization for travel of attendants for claimants and beneficiaries under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12).* (a) Regional managers are authorized to provide the services of an attendant to accompany a claimant or beneficiary while such claimant or beneficiary is traveling for the purposes set forth above, when, and only when, in the judgment of the chief, vocational rehabilitation and education division such services are necessitated by the severity of the disability of the claimant or beneficiary.

(b) In any case in which there is doubt as to the necessity for such services, the chief, vocational rehabilitation and education division, will be guided by the recommendations of the medical consultant, based on the latter's review of the medical evidence in the veteran's claims folder.

(c) Persons not in regular civilian employment of the Federal Government may be authorized to act as such attendants and will be furnished common-carrier transportation, meal, and lodging requests. Such persons will be paid a fee, except when they are relatives of the claimant or beneficiary, but they may not be paid mileage allowance. (A relative, for this purpose, will comprehend a spouse, parent, son or daughter, brother or sister, uncle or aunt, niece or nephew, by blood or marriage.) Persons in the regular civilian employment of the Federal Government may be authorized to act as such attendants and, when so assigned, will be entitled to transportation and expenses incident thereto. They may be allowed per diem in lieu of subsistence in accordance with the provisions of Standardized Government Travel Regulations, upon issuance of authorization therefor, and will not be supplied meal and lodging requests. No fee will be paid to civilian employees of the Federal Government who act as attendants under authority of this paragraph.

(d) The fees for nonemployee attendant service will be as follows: A maximum of $8.00 for 24 hours; $5.00 for the first 8 hours or fraction thereof; $1.50 for the next 8 hours or fraction thereof, up to 16 hours; $6.50 for exactly 16 hours; and $8.00 for any period beyond 16 hours and up to 24 hours. For service in excess of 24 hours, the same fractional rates will apply. Less than maximum fees will be authorized if satisfactory service at lower rates can be obtained in the community.

(e) Traveling expenses and fees of attendants authorized pursuant to this paragraph will be recorded in the allotment accounts for the following programs and objects of expenditures:

Program	Object	Item of expenditure
5100	021	Travel expenses of Veterans' Administration employees serving as attendants, including transportation and per diem.
5900	022	Transportation, meal, and lodging requests furnished nonemployee attendants.
5100	070	Fees paid nonemployee attendants.

Tutoring

§ 21.278 *General.* (a) Tutoring at Government expense may be provided under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), when it is indicated that in order for a veteran to be successfully rehabilitated, there is need for special assistance beyond that given to other students pursuing the same or comparable courses. This determination is based on the fact that under Part VII, the Veterans' Administration has a definite responsibility to restore employability lost by a handicap due to service-incurred disability.

(b) Ordinarily, the selected employment objective should be one which the veteran may attain successfully by pursuing the regular unit courses of instruction given to other students following the same course. As a general principle, therefore, private tutoring at Government expense should be authorized under Part VII only in exceptional cases; e. g., when a veteran requires the services of a tutor in order to make up work because of illness or other unavoidable absence from class for a period of time, or when the services of a tutor will enable a veteran to make up specified prerequisites without unnecessary delay in

the pursuit of his course of vocational rehabilitation.

Reader Service

§ 21.279 *Reader service under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), for veterans with visual impairment.* (a) When reader service is necessary for the successful pursuit of a course of vocational rehabilitation by a veteran with visual impairment, such service may be furnished in accordance with the policy and procedure set forth herein.

(b) Every trainee in school training whose vision is so impaired as to make it impossible or inadvisable for him to use his eyes for reading will be furnished with reader service. This group of trainees will include those whose best corrected vision is 20/200 or less in both eyes, or whose central vision is greater than 20/200 but whose field of vision is limited to such an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees, and those with impaired vision, whose condition or prognosis indicates that the residual sight will be affected detrimentally by the use of his eyes for reading.

(c) The suitability of any prospective reader with regard to personality, and background of education and experience should be scrutinized to determine that the reader is a person who has some insight into the problems of a newly blinded adult and who can provide, as an incidental part of his work, assistance to the trainee in becoming oriented to the school or training establishment. A reader for a veteran training on the job should be an individual whose vocational interest lies in the occupational field in which the veteran is being trained. For the school trainee, a superior student taking the same courses as the veteran usually can provide excellent reader service. If such a student is not available, an upper-class student or a graduate student studying in the same major field as the veteran should be satisfactory. In order that the quality and quantity of the service may be adequate in different subjects, in some instances it may be advisable to provide more than one reader for the trainee. A member of the trainee's family should not be employed as a reader unless it is impossible to secure satisfactory service through any other source.

(d) The functions of a reader should be more than simply to read mechanically. His services should serve a twofold purpose:

(1) To read printed material with a degree of intelligence commensurate with the importance of the subject matter.

(2) To test the veteran's understanding of what has been read.

Termination of Training

§ 21.280 *Categories.* Terminations of training are classified in three categories: rehabilitation, interruption, and discontinuance.

§ 21.281 *Status "rehabilitated".* Terminations of a trainee under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), shall be considered employable and declared "rehabilitated," and the necessary steps will be taken to effect such action as soon as any one of the following conditions exists:

(1) When the trainee has completed the prescribed course of training as outlined in the individual training program.

(2) When a trainee while in training accepts employment in the general field in which he is being trained other than that employment which is incident to his training, and his earnings approximate those of the average trained worker in the occupation, and the employment is of such a kind which to pursue fulltime would be not incompatible with the trainee's disability, thus demonstrating attainment of employability at a satisfactory level. In such cases so declared rehabilitated as have not actually completed the prescribed course of training, it is to be noted that the veterans are free to continue the course under Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), provided they have entitlement remaining.

(b) At all times trainees shall be made aware of the prospective date of rehabilitation, and as a particular trainee's date of rehabilitation approaches, he should be made constantly aware of such date. Whenever feasible all trainees who are to be declared rehabilitated shall be given 60 days written notice prior to the effective date of such action.

(c) When a trainee discontinues training under § 21.283 (a), (b), or (c), and investigation later discloses that the trainee has accepted employment in the occupation for which he was being trained and medical or other acceptable evidence indicates that the employment is of a kind which to pursue fulltime would be not incompatible with the trainee's disability, the trainee will be placed in status "Rehabilitated" effective on the last date of instruction for purposes of the office record. In such cases, the veteran shall not receive written notice of rehabilitation and shall not be paid the subsistence allowance ordinarily paid for 2 months following the determination of employability. As indicated, this action is for record purposes only, and the veteran's re-entrance into training under the conditions provided for in § 21.286 will not be jeopardized by this recording.

§ 21.282 *Status "interrupted".* A veteran once inducted into training under Part VII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), will be expected to pursue his training program to completion without interruption insofar as it is possible for him to do so. Wherever possible, continuous training shall be provided for all trainees, including training during the summer. A trainee will be placed in status "Interrupted," effective on the day following the last day of attendance, or, if the trainee has applied for leave of absence, the day following the last day of approved leave, when training is interrupted for one of the following reasons:

(a) Training at the present institution or otherwise is not available during vacation periods chargeable to leave under §§ 21.260 to 21.265.

(b) Extended personal illness when all leave which may be granted to the trainee under leave regulations has been exhausted and there is good promise that the trainee will resume training.

(c) Any other absences from training in which it is indicated that the trainee will return to training and there is no basis for discontinuance.

§ 21.283 *Status "discontinued."* (a) A trainee under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), shall be placed in status "Discontinued" when it is clearly determined that any one of the following conditions exist:

(1) When all reasonable efforts have failed to train the veteran to the point of employability.

(2) When it is determined by competent medical examination that a trainee will be absent from training to undergo hospital or home treatment for an indefinite period with indication that he will not return to training.

(3) When the trainee fails to avail himself properly of the training provided; or when his misconduct prevents progress toward his employment objective or ultimate placement in employment; or when he willfully violates the regulations of the institution or establishment in which placed for training or his conduct is insubordinate or disorderly at any place of training; or when he voluntarily withdraws from training for reasons other than physical condition or excused interruptions.

(4) When it is established that the determination of eligibility or need for vocational rehabilitation is based on fraud, error of law, confusion of names, or misfiling of papers; or that the trainee never had a service-connected disability; or that fraud was practiced in any application for training or for subsistence allowance.

(b) In all cases of discontinuance of training, the training officer shall ascertain and record the facts together with evidence justifying the discontinuance.

Re-entrance Into Training

§ 21.285 *Authority.* Regional managers are authorized to re-enter veterans into training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), subject to the conditions set forth herein.

§ 21.286 *Re-entrance after rehabilitation.* When, subsequent to an official declaration of rehabilitation, a veteran requests further training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), his written request upon receipt will be routed to the education and training section and will be processed in the following manner. The veteran's request will be referred for review to a training officer, preferably the one who was responsible for the supervision of the veteran while he was in training. The training officer will prepare a summary statement setting forth the facts and circumstances which should be considered in the case based on a review of the subject veteran's complete advisement and training record and any additional information, such as statements from the veteran's teachers, super-

visors, foremen, employer, etc., which the training officer believes will be pertinent to consideration of the veteran's request, and including his recommendations. The veteran's file, including the above statement and any additional recommendations, will be referred by the chief, education and training section to the advisement and guidance section to determine whether need for training continues to exist and whether the original employment objective is suitable. If need is re-established and a suitable employment objective is agreed upon, it will be the responsibility of the education and training section to prepare a training program to provide for the minimum amount of additional training needed to restore employability and to re-enter the veteran into training.

§ 21.287 *Re-entrance after interruption.* When training has been interrupted for one of the reasons set forth in § 21.282, and the veteran presents himself for re-entrance into training at the appointed time, re-entrance will be accomplished even though there has been a reduction in the veteran's disability rating to less than a compensable degree during the period of interruption. The case of a veteran who fails to report for re-entrance at the appointed time will be handled in accordance with the principles governing re-entrance into training after discontinuance, as set forth in § 21.288.

§ 21.288 *Re-entrance after discontinuance.* When a veteran, whose training was discontinued under one of the conditions set forth in § 21.283, applies for re-entrance into training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), due consideration will be given to the facts in the individual case, and if the facts warrant, the veteran may be re-entered into training provided need for vocational rehabilitation is re-established.

§ 21.289 *Right of appeal.* When an application for re-entrance into training is denied for any reason the veteran shall be advised of his right of appeal to the board of veterans' appeals and of the time limit in which an appeal must be filed. (See paragraph III, Part II, Veterans' Regulation 2 (a), as amended by Veterans' Regulation 2 (c).) The following paragraph is suggested for the purpose of informing the veteran with some measure of uniformity, of his right of appeal and of the time limit in which an appeal must be filed. It is believed that such a statement with changes to fit the circumstances will eliminate many appeals and improve administrative practices in connection therewith:

> If there is evidence available to you which in your opinion would warrant a different decision, such evidence should be immediately submitted to this office for reconsideration of your claim. If you have no further evidence to submit but have substantial reason to believe that the decision is not in accordance with the law and the facts in your case, you may appeal to the Administrator of Veterans' Affairs at any time within one year from the date of this letter. In the event you feel that appellate consideration is justifiable, further correspondence relating to the matter should be addressed to this office.

Placement Into Employment

§ 21.290 *Veterans' Administration responsibility under the law.* (a) The primary responsibility of the Veterans' Administration under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), is to restore employability lost by virtue of the handicap of a service-incurred disability—to fit the disabled veteran for employment consistent with the degree of disablement. Additionally, pursuant to the provisions of paragraph 5 of Part VII, the Veterans' Administration is charged with the power and duty to cooperate with and employ the facilities of other governmental and State employment agencies for the purpose of placing into gainful employment veterans trained under the provisions of Part VII.

(b) Although Part VII merely requires that employability be restored, the best proof that employability has been restored is a showing that a veteran actually has been placed in suitable employment. Accordingly, every training program should have as its goal the actual employment of the veteran in the selected employment objective. When the method of training consists of training on the job or when training in a school is followed by training on the job, the course is commonly entered with the expectation that it will terminate with employment in the establishment in which the training is being provided. When the entire course of training is given in a school, employment following the completion of the course may be more or less automatic through placement services provided by the school for its graduates. In any case, however, the training officer who is responsible for supervision of the veteran should constantly direct his efforts to the end that the veteran will be employed immediately when the training program has been completed. Nevertheless, there will be cases in which, for one reason or another, employment will not be immediately available. It will be under such conditions that the responsibility of the Veterans' Administration for cooperating with and employing the facilities of other governmental and State employment agencies will need to be exercised.

§ 21.291 *Designation of training officer to coordinate employment activities.* In order to discharge the above responsibility in the most effective manner, there shall be designated within the education and training section of each regional office, on a full- or part-time basis, depending upon the workload, one senior training officer, whose primary responsibility will be to maintain a liaison between the Veterans' Administration and the employment services of other Government departments, the State, and the community in order that those services may be utilized to the fullest extent in providing employment for rehabilitated veterans upon the completion of their prescribed courses. Not less than 90 days prior to the anticipated date of rehabilitation, training officers will report to the training officer designated to coordinate employment activities the name of each trainee for whom employment arrangements have not been made. If the complete training record is not available to the designated training officer, the report will include a résumé of information pertinent to the matter of employment and in any case the report will include any such information which is not already on record in the file. It will be the responsibility of the training officer designated to contact such public employment agencies as can be of service in the individual case as well as any prospective employers whom he has reason to believe might have need for a person having the trainee's qualifications. It should be borne in mind, however, that this procedure does not relieve the training officer responsible for the veteran's training of his responsibility to continue his efforts to effect the veteran's employment at the completion of training.

§ 21.292 *The veteran's responsibility for his employment.* (a) Training officers will take care to inform each trainee under their supervision that the Veterans' Administration will have discharged its obligation under the law when it has been determined that he has been trained to employability and that despite the fact that the Veterans' Administration will exert all reasonable effort to place the trainee in employment, that it is not to be construed as signifying that such effort alone can be relied upon to effect his placement without any effort on his part to do the essential things commonly expected of anyone who is seeking employment.

(b) Refusal on the part of a rehabilitated veteran to accept an employment opportunity in line with his training, or leading with reasonable certainty and within a reasonable time into the employment nearest in line with his objective, shall be recorded in the trainee's folder. Refusal to accept satisfactory employment opportunities without sufficient reason may be made the basis for discontinuing employment assistance to the veteran.

§ 21.293 *Follow-up after placement into employment.* A follow-up procedure after placement into employment following a declaration of rehabilitation will not be indicated in the vast majority of cases. Theoretically, the employment objective will have been so carefully chosen and the course of training will have been so well-rounded and thorough that completion of the course will in itself be proof that employability has been restored. There will be a small percentage of cases, however, wherein the facts as they develop during the period of training will demonstrate an element of uncertainty as to whether employability will actually be restored by the completion of the prescribed course. Most of these difficulties should be corrected as they come to light by adjusting and modifying the program so that the uncertainties will have been eliminated by the time the course is completed. This is the principal purpose of supervision by training officers. Despite these safeguards, there may still remain a few instances when it will be necessary to observe, for a time, the veteran's performance in actual employment when he is without the benefit of Federal assistance

in order to discover with certainty whether he is able to carry on in competition with able-bodied workers. A follow-up procedure for rehabilitated veterans is not to be routine but in those extraordinary cases a minimum period of follow-up will be permitted to facilitate the veteran's adjustment to employment in order to discover in advance any indications that failure is imminent. Thus, it may be possible to bring about a correction of the difficulties and to prevent a loss of previous rehabilitation efforts.

EDUCATION AND TRAINING UNDER PART VIII, VETERANS' REGULATION 1 (a), AS AMENDED (38 U. S. C., CH. 12)

Courses of Education and Training

§ 21.300 *Definition of course of education or training.* The education or training to which a veteran is eligible and entitled under paragraphs 1 and 2 of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), is defined in paragraph 3 of Part VIII as "such course of education or training, full-time or the equivalent thereof in part-time training" as the veteran may elect to pursue "at any approved educational or training institution at which he chooses to enroll."

(a) Based on the particular terms as used in Part VIII, only one course at one institution may be pursued at any one time, except as otherwise provided in this section and §§ 21.301 to 21.309. The one course may consist of such curriculum, program of study, or combination of unit courses or subjects as are prescribed or recommended by the institution as constituting the course or the one course may consist of a single unit course or subject. Single subjects taken independently of an organized sequence of subjects presumably will be taken as part-time training. On the same basis, the course will be directed toward a predetermined objective not necessarily vocational in nature. In school courses such an objective may be educational, as obtaining a high school diploma or a college degree; or it may be vocational, as preparing for the occupation of teacher or other professional occupation, or as preparing for the occupation of plumber or other trade. In school courses, the educational or vocational objective also may be stated in terms such as "a four-year course of study, the first two years of which are to be preparatory to specializing in a field of study which may be determined at the initiation of the course or which will be determined with the school at or before the completion of the preparatory portion of the course." In training on the job, based upon provisions of paragraph 11 (b) of Part VIII, the objective will be vocational. Very different unit courses or subjects may form a part of the elected course provided they are prescribed or recommended by the institution as necessary or desirable functional parts of the course or as elected parts of the veteran's course for which credit is granted. This would permit a veteran to include as a part of his course not only the required major or minor unit courses and such elective courses as are necessary or desirable functional parts of his course but also such other elective unit courses as are clearly established as available to other students enrolled for similar over-all courses. For example, a course of stenography or typing, although not usually functional as part of a course for the objective lawyer, where a veteran plans to practice law in such a way as to make the use of stenography or typing a practical benefit or even a necessity, such unit course or courses may well be a part of the veteran's one over-all course. Likewise, while a course of Spanish ordinarily would not be a functional part of a course in refrigeration, where the veteran planned to practice the occupation refrigeration mechanic in Latin America, if that fact and the facts of his plan were established, then the course in Spanish could well form a part of his over-all course, still subject to prescription or recommendation of the institution offering the refrigeration course. The one course often may consist of training on the job supplemented by related studies in a school or college. There is also the cooperative course involving alternate periods of work in school or college and in a business or industrial establishment. Such cases will require concurrent enrollment in two institutions and may well be approved.

(1) Concurrent enrollment in two institutions ordinarily will not be allowed, but may be allowed when:

(i) The one complete course as contemplated by Part VIII is not available at the principal training institution at which the veteran is enrolled.

(ii) The principal institution prescribes or recommends the course of training and approves the enrollment in the second institution.

(iii) The training furnished by the second institution is part of the veteran's one elected course and can be scheduled satisfactorily.

(iv) Books, supplies, and equipment furnished the veteran in connection with his course of training at the principal institution and which may be used in the second institution are not duplicated.

§ 21.301 *Types of courses of education and training.* For purposes of part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), the types of courses of education and training are:

(a) *School course.* A course which is pursued at an institution or a part thereof devoted exclusively to educational or training purposes. The courses would include not only those offered by schools but would include also those offered by such parts of a business or industrial establishment as are operated within the plant as training situations devoted exclusively to educational or training purposes as distinguished from the regular production activities of the establishment.

(1) *Noncredit course.* A unit course or unit subject pursued without credit at an accredited collegiate institution, which various educational institutions refer to as "audit" course, an "auditor" course, and "auditing" course, a "hearer" course, etc. Such unit courses or unit subjects may be prescribed or recommended by the institution as a part of an enrollee's course or may constitute the enrollee's entire course.

(b) *Training-on-the-job course.* A course which is pursued at an establishment devoted primarily to productive agricultural, business, industrial, or professional activities rather than to giving courses of instruction. In such course the training is pursued toward a specified occupational objective and the learning method is primarily by being told and shown and by observing and assisting, gradually increasing the participation in the productive activities and doing more and more of the productive work with increasing independence of instruction as the course progresses. For purposes of Part VIII, as amended, there are two categories of training on the job, as follows:

(1) *Apprentice training courses.* For the purposes of Part VIII, as amended, apprentice training courses are those which are under the supervision of a State apprenticeship agency, a State apprenticeship council, or the Federal Apprentice Training Service and those which, although not under the supervision of a State apprenticeship agency, a State apprenticeship council, or the Federal Apprentice Training Service nevertheless are recognized and approved as apprentice training courses by the State approving agency or are approved by the Administrator as apprentice training courses, the approval being based upon the fact that the courses possess the following characteristics:

(i) The course leads to an occupation the performance of the duties of which requires the use of skills which commonly are learned through training on the job and in which occupation the obtaining of an appointment to a job is based upon having been trained on the job rather than being based on such elements as length of service, normal turn-over, personality, and other personal characteristics.

(ii) The course is definitely identified as an apprentice training course by the establishment offering it.

(iii) The course meets the requirements and criteria of paragraph 11, excepting subparagraph 11 (b) 2, e of Part VIII.

(iv) The course provides for a well-defined, written agreement between the establishment and the trainee setting forth the terms and conditions of training.

Subparagraphs 11 (b) (1) and 11 (b) 2 of Part VIII do not apply to apprentice training courses but, the course or program of the veteran will be judged on the basis of the requirements and criteria in subparagraphs 11 (b) 1 and 11 (b) 2 of Part VIII, except that the criterion in subparagraphs 11 (b) 2 e of Part VIII shall not apply. Where deficiencies are found, a reasonable opportunity will be given the establishment to make correction.

(2) *Other training on the job.* For purposes of Part VIII, as amended, courses of other training on the job are those courses which, in addition to meeting the definition indicated in this paragraph, pursuant to subparagraphs 11 (b),

11 (b) 1, and 11 (b) 2 of Part VIII, as amended, have the characteristics and meet the conditions which follow:

(i) The training content of the program is adequate to qualify the veteran for appointment to the job for which he is to be trained.

(ii) There is reasonable certainty that the job for which the veteran is to be trained will be available to him at the end of the training period.

(iii) The job is one to which progression and appointment are based upon skills learned through organized training on the job as scheduled in course or program and not on such factors as length of service and normal turn-over.

(iv) The wages to be paid the veteran for each successive period of training are not less than those customarily paid in the establishment and the community to a learner in the same job and who is not a veteran and are in conformity with State and Federal laws and applicable bargaining agreements.

(v) The job customarily requires a period of training of not less than 3 months and not more than 2 years of full-time training.

(vi) The length of the training period is no longer than that customarily required by the establishment and other establishments in the community to provide the trainee with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the trainee will need to learn in order to become competent on the job for which he is being trained.

(vii) Provision is made for related instruction for the individual veteran who may need it. For purposes of Part VIII, related instruction to qualify as such and warrant the payment of tuition must provide the veteran with theory and/or technical information directly related to and functional in the practice of the occupation for which the veteran is being trained. Instruction in subjects which are not directly related to and functional in the practice of the occupation for which the veteran is pursuing training on the job will not be considered related training for purposes of Part VIII, and tuition for such will not be paid.

(viii) There is in the establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on the job.

(ix) Adequate records are kept to show the progress made by the veteran toward his job objective and a periodic report showing the conduct and progress made in the course of training on the job will be provided to the Veterans' Administration.

(x) Appropriate credit is given the veteran for previous job experience, whether in the military service or elsewhere, his beginning wage adjusted to the level to which such credit advances him, and his training period shortened accordingly. No course of training will be considered bona fide if given to a veteran who is already qualified for the job objective by training, by experience, or by a combination of training and experience.

(xi) A copy of the training program as approved by the State agency is provided to the veteran and to the Veterans' Administration by the employer.

(xii) Upon completion of the training, the veteran is given a certificate by the employer indicating the length and type of training provided and that the veteran has completed the course of training on the job satisfactorily.

(c) *Combination course.* A course which is a combination of training on the job and training in school, including related instruction and/or instruction in additional skills, pursued concurrently. Three variations of combination courses are cited as follows:

(1) *Training on the job and in school.* A course which is primarily training on the job with supplemental related instruction, usually in school.

(2) *Cooperative course.* A course which is pursued primarily at a school; the objective commonly is attainable through school instruction alone, and the training-on-the-job portion of the course is strictly supplemental to the school course. This arrangement is characteristic of cooperative courses on the collegiate level and junior college level and in some technical high schools. Commonly the division of time between the school portion of the program and the training-on-the-job portion is such that the student devotes at least one-half of the total time to the school portion, and the periods in school and training on the job are relatively long, such as a full term in school and an alternate term on the job, although shorter periods are also in practice. In some localities, there are arrangements where part of each day is spent in school and part on the job and other arrangements where a full day is spent on the job and part time is spent in school one or more times a week. These arrangements sometimes are referred to as cooperative courses. Although the institution offering such a course is quite free to call the course a cooperative course without let or hindrance from the Veterans' Administration, this type of situation may not be considered as a cooperative course for purposes of Part VIII, but rather as a combination course, training on the job and in school, as in subparagraph (1) of this paragraph. Such a determination will be made despite the fact that the veteran is enrolled, at least nominally, with the school for the on-the-job training as well as the training in school.

(3) *Institutional on-farm course.* For purposes of Part VIII, a course which is specifically defined in paragraph 11 (c) of Part VIII.

(d) *Correspondence course.* A course conducted by mail, consisting of one or more written lesson assignments furnished by a school and requiring submittal of written lessons by the trainee. Such lessons usually are corrected and graded by the school and returned to the trainee.

§ 21.302 *Full-time training for purposes of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).* (a) In collegiate institutions, either undergraduate or graduate, which use a standard unit of credit recognized by accrediting associations. (These institutions will include those which are members of recognized national or regional educational accrediting associations and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value and without examination by collegiate institutions which are members of national or regional educational accrediting associations.)

(1) Full-time training pursued during the regular school year (Commonly from the beginning of the fall term through the end of the spring term) will consist of what the institution considers to be full-time for all students in the same course or for the particular veteran but for purposes of paying subsistence allowance will consist of not less than a program of 12 standard semester hours of credit per semester or the equivalent of 12 standard semester hours of credit per semester in quarter hours, term hours, or in other measures of credit used by a particular institution.

(2) When a veteran enrolls so late in a school term that he can be accepted only for less than the full standard program of the institution and hence for that term will not earn credit for a full minimum program, nevertheless such veteran will be considered to be in full-time training provided the institution considers him to be in full-time training and provided further that his program consists of not less than a weekly schedule of 12 required standard class sessions or their equivalent in laboratory or field work, research, or other types of prescribed activity.

(3) Full-time training pursued, other than during the regular school year, will consist of what the institution considers to be full time for all students in the same course or for a particular veteran but not less than a weekly schedule of 12 required standard class sessions or their equivalent in laboratory or field work, research, or other type of prescribed activity whether or not the veteran is registered for or earns full credit for the period involved, for example: A veteran who is enrolled in a short summer session requiring attendance at 12 standard class sessions per week will be considered in full-time training although he may be registered for or earn as little as two or three semester hours credit for the period involved.

(b) In graduate or advanced professional collegiate institutions which use a standard unit of credit recognized by accrediting associations, as defined in paragraph (a) of this section, when an enrollee is pursuing a course which consists of or includes research or a comparable prescribed activity for which standard units of credits are not given, he will be considered to be pursuing full-time training when the responsible official of the institution so certifies subject, however, to such review by the chief, education and training section, as the case may warrant and to such revision as is determined in collaboration with the institution.

(c) In all other schools, including high schools, full-time training will consist of 25 or more clock hours of required attendance per week.

(d) In establishments providing training on the job, full-time training will consist of the standard workweek of the

establishment at which the training is pursued but not less than 36 hours per week.

(e) In a combination of on-the-job training and school training, the fraction of full-time training represented by the portion of each kind of training will be determined in the manner set forth in § 21.303. The fractional parts of each kind of training will then be combined to indicate the fraction of full-time training represented by the combination of the two kinds of training. To be considered full-time training, the fractional parts so combined must total not less than one.

(f) Decreases in amount of credit of required hours of attendance during a course which result in a veteran's pursuing less than full-time training as defined herein will require an adjustment to be made in the subsistence allowance and in the charge against entitlement.

§ 21.303 *Part-time training for purposes of Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12).* Part-time training is that which occupies the enrollee for less than full time as defined in § 21.302. The following instructions will govern with reference to part-time courses:

(a) *When authorized.* Part-time training may be elected by a veteran who wishes to pursue such a program of training. The veteran may pursue part-time training for such aggregate length of time as will equal the total full-time training to which he is entitled, for example: A veteran who is entitled to 2 years of full-time training would be entitled to pursue one-half full-time training for a total of 4 years. Likewise, he would be entitled to pursue three-fourths full-time training for 2 years and 8 months.

(b) *Measurement of part-time training.* For purposes of Part VIII, part-time training is measured only in the fractions three-fourths (¾), one-half (½), and one-fourth (¼) of full-time training. The fractions will be determined in accordance with the standards herein prescribed for the type of education or training course being pursued.

(1) *Collegiate institutions.* (i) For undergraduate courses in collegiate institutions which use a standard unit of credit, recognized by accrediting associations, as defined in § 21.302 (a), determination of the fraction of full-time training represented by the part-time training in a given case will be based on the number of standard semester hours or their equivalent in quarter hours, term hours, or other measure of credit used by the institution for which the enrollee is registered for credit. Less than 12 but not less than nine semester hours per semester, or their equivalent, will be counted as three-fourths full-time training. Less than nine but not less than six semester hours per semester, or their equivalent, will be counted as one-half full-time. Less than six semester hours per semester, or their equivalent, will be counted as one-fourth full time. Although entitlement is charged, no subsistence allowance is paid for less than three semester hours per semester, or their equivalent.

(ii) For graduate courses or advanced professional courses in collegiate institutions the determination will be made in the individual case in accordance with the policy of the institution and a certification by a responsible official of the institution stating that the course being followed is considered as three-fourths time, half-time, or one-fourth time will be accepted subject, however, to such review by the chief, education and training section, as the case may warrant and to such revision as is determined in collaboration with the institution.

(2) *Other schools.* In all other schools, including high schools, determinations will be based on clock hours of required attendance at the school. Less than 25 but not less than 18 clock hours of required attendance per week will be counted as three-fourths time. Less than 18 but not less than 12 clock hours of required attendance per week will be counted as one-half time. Less than 12 clock hours of required attendance will be counted as one-fourth time. Although entitlement is charged, no subsistence allowance is paid for less than six clock hours of required attendance per week.

(3) *Business or industrial establishments.* In business or industrial establishments, determinations will be based on the actual number of hours worked during the standard work-week of the establishment in which the training is offered. Less than 36 but not less than 27 hours will be counted as three-fourths time. Less than 27 but not less than 18 hours will be considered as one-half time. Less than 18 hours will be considered as one-fourth time. Although entitlement is charged, no subsistence allowance is paid for less than 9 hours per week.

(4) *Combination courses.* For combination courses consisting of school training and on-the-job training pursued concurrently, the fraction of each type of training will be determined in accordance with the appropriate standard stated above and the two fractions will be combined to indicate the fraction of full-time training represented by the combination course which is being pursued.

(c) *Certified statement used in determining fractional part of full time course.* The certified statement from the training institution insofar as it furnishes the needed information may be used for determining what fractional part of a full-time course the veteran is pursuing, subject, however, to such review and check by the chief, education and training section, as the case may warrant.

§ 21.304 *Measurement of noncredit courses for purposes of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).* (a) For the purpose of determining, under §§ 21.302 (a) and (b), and 21.303 (a) and (b), what fractional part of full-time training is being pursued, enrollees pursuing noncredit courses, as defined in § 21.301 (a) (1), which require all of the work prescribed for students enrolled for credit, excepting credit examinations, will be considered as obtaining full credit hours for the course.

(b) For the same purpose, enrollees pursuing such courses only on the basis of attendance and listening at class will be considered as obtaining one-half full credit hours for the course.

§ 21.305 *Repetition of a course.* (a) A veteran having completed a course under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), according to the standards and practices of the institution and having subsequently failed to pass an examination to qualify for license to practice a profession or trade, is not entitled to enroll in and pursue again at the expense of the Government, the course which he has already completed except as provided in paragraph (b) of this section. However, an eligible veteran who has completed a course of education or training under Part VIII may pursue a review course under that part provided the review course is a separate and distinct course specifically organized and established as a review course and, therefore, does not constitute a repetition of a course which the enrollee has already completed. Such a course to be recognized as a review course commonly may be identified by the common characteristics of such a course; namely, concentration of content, intensified application to the pursuit, and the short period required for the course compared to the time required for the primary course. Representative of courses in this categody are bar review courses for preparing veterans who have already completed the prescribed course in law, for taking the bar examination.

(b) Subject to the limitations set forth in paragraph (c) of this section, a Part VIII veteran may be authorized not only to pursue a review course for the purposes stated in paragraph (a) of this section, but to repeat a review course when such repetition is imperatively necessary in order to accomplish the veteran's vocational or educational objective and there is good promise that such repetition will enable him to pass the examination with such standing as will insure attainment of licensure. If there is poor promise that to repeat the course would insure licensure, repeating the course should be denied.

(c) For purposes of the limitations of paragraph 3 (b) of Part VIII on payments when the principal course pursued under Part VIII is a short course of less than 30 weeks in length and the review course is a review in whole or in part of that short course of less than 30 weeks, the maximum amount which may be paid for the total course, the short course of less than 30 weeks plus the review course and any repetitions of the review course, cannot exceed $500 under the terms of paragraph 3 (b) of Part VIII. However, when the principal course pursued under Part VIII is 30 weeks or more in length and is followed by a review course of less than 30 weeks, the $500 limitation imposed by paragraph 3 (b) of Part VIII will apply only to the cost of the review course. In the latter case, however, the number of times a veteran may be authorized to pursue a review course under

Part VIII, including the initial pursuit of the review course plus any approved repetitions, either in whole or in part, as provided for under paragraph (b) of this section, will be limited to a total expenditure of $500.

(d) The provisions of this paragraph have no reference to and do not preclude the repetition of a unit course or unit subject where the veteran has failed the subject or course and the school or training establishment requires him to repeat the unit course or unit subject as a requisite for continuing in his elected course, or otherwise.

§ 21.306 *Changing a course of education or training.* (a) When a veteran enrolls in a course of education or training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), it is contemplated that he will complete the course before changing to another course. However, pursuant to the first proviso of paragraph 3 (a) of Part VIII, a veteran may change his course of education or training only for reasons satisfactory to the Administrator. A change of course commonly may be considered to be for satisfactory reasons when:

(1) The veteran is not making satisfactory progress in his present course and the failure is not due to his own misconduct, his own neglect, or his own lack of application; or

(2) The course to which the veteran desires to change is more in keeping with his aptitude, previous education, training, or other such pertinent facts; or

(3) The educational or training institution at which the veteran is enrolled is unsuited to providing satisfactory instruction in the course for which he is enrolled and transfer to an approved institution that is suited to offer satisfactory instruction in the course for which he is enrolled is not feasible or practicable; or

(4) The veteran has changed his place of residence for good and sufficient reasons and there is no satisfactory approved educational or training institution available which offers the course for which he was enrolled in the previous institution.

(b) Definition of a "change of course." A change in educational or vocational objective is considered to constitute a change of course.

§ 21.307 *Changes within the course not considered to be changes of course.* (a) For purposes of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), the following are not considered to be changes of course and may be effected by the institution at which the veteran is pursuing the course of education or training without the prior approval of the Veterans' Administration: *Provided, however,* That the institution shall notify the Veterans' Administration immediately upon effecting each such action and with the notification shall furnish the Veterans' Administration complete information as required in paragraph (b) of this section:

(1) *Course adjustment.* A change of one or more unit subjects or unit courses without changing the enrollee's major vocational or educational objective, including the dropping of a unit course without replacing it with another, or the adding of a unit course, or a change in the sequence in which unit subjects or unit courses are undertaken.

(2) *Advancement or progression.* Advancement or progression to a more advanced phase of the course from the preparatory phase of the course of education or training as contemplated under § 21.300 (a), for example: from preprofessional to professional; from preengineering with no indication of what branch of engineering to a specialized field of engineering; from premedical to dental or from predental to medical; from liberal arts to journalism; etc.

(b) Because of the fact that changes within the course often affect the amount of tuition to be paid or the amount of subsistence allowance to be paid, the notification of such changes as those in paragraph (a) (1) or (2) of this section, will state at least all the details of the change, the names of the unit courses added and/or the unit courses dropped, together with the credits of each if a collegiate institution or the clock hours if not a collegiate institution, and the details of any change in charges.

§ 21.308 *Change of course for satisfactory reasons.* A change of course for satisfactory reasons will be made in accordance with the following policies:

(a) Public high schools and institutions of higher learning will be authorized by the regional manager to effect a change of course for a veteran pursuing a course of education or training at such an institution without the prior approval of the Veterans' Administration where the reason for the change is as indicated in § 21.306 (a) (1) or (2): *Provided,* That such a change shall be effected only at the completion of the semester, term, quarter, or other period for paying tuition: *And provided further,* That the institution shall agree to notify the Veterans' Administration immediately upon effecting each such action and with the notification will furnish the Veterans' Administration complete information as required in paragraph (e) of this section.

(b) Other schools whose educational programs and standards of administering their programs are of excellent character and which provide vocational counseling service considered to be adequate by the chief, vocational rehabilitation and education division, also may be authorized to effect changes of course for veterans pursuing courses of education at such schools without the prior approval of the Veterans' Administration where the reason for the change is as indicated in § 21.306 (a) (1) or (2): *Provided,* That such a change shall be effected only at the completion of the term or other period for paying tuition: *And provided further,* That the school shall agree to notify the Veterans' Administration immediately upon effecting each such action and with the notification shall furnish the Veterans' Administration complete information as required in paragraph (e) of this section.

(c) Training-on-the-job establishments whose training programs and standards of administering their programs are of excellent character and which provide vocational counseling service considered to be adequate by the chief, vocational rehabilitation and education division, may be authorized to effect changes of course for veterans pursuing courses of training at such establishment without the prior approval of the Veterans' Administration where the reason for the change is as indicated in § 21.306 (a) (1) or (2): *Provided,* That the establishment shall agree to notify the Veterans' Administration immediately upon effecting each such action and with the notification shall furnish the Veterans' Administration complete information as required in paragraph (e) of this section.

(d) A change of course for a veteran pursuing a course of education or training at an institution in a category other than those named in paragraphs (a), (b), or (c) of this section and a change of course for a reason other than those indicated in § 21.306 (a) (1) or (2) will require prior approval by the Veterans' Administration. In such cases, requests for change of course will be made in writing to the Veterans' Administration on VA Form 7–1905e, by the veteran, setting forth full information concerning the proposed change, including the reasons for desiring to make it, or by letter containing the same or equal information. The institution at which the veteran is pursuing his present course will furnish, in the appropriate section of Veterans' Administration Form 7–1905e, the items of information called for. All requests for change of course within the scope of this paragraph will be received by the education and training section which will be responsible for approving or disapproving such requests as expeditiously as possible and for notifying the registration and research section of the action taken in each case. Upon receipt of the request for a change of course from a veteran in the category contemplated by this paragraph, an investigation will be made by the education and training section to determine that the reasons given are according to the facts.

(1) Where the institution or establishment at which the veteran is or was pursuing his elected course certifies that the veteran's conduct and progress are or were satisfactory, the education and training section will approve or disapprove the request without referral.

(2) Where the institution or establishment at which the veteran is or was pursuing his elected course certifies that the veteran's conduct or progress is or was unsatisfactory, the education and training section will refer the request, together with complete pertinent information relating to the request, to the advisement and guidance section for recommendation. Recommendations regarding the request for a change of course are made by advisement and guidance personnel in accordance with the procedure set forth for counseling veterans in the "Manual of Advisement and Guidance." That procedure includes concurrence by the chief, education and training section, or designate, in the recommendations through the execution of certificate C to indicate that there is no

objection to the training plan developed with the veteran through the counseling procedure. In those cases wherein it may be found to be impracticable for the veteran to appear personally for counseling, if information in addition to that which has been obtained previously is required, such information is obtained by advisement and guidance personnel, and the facts in the case are considered by a vocational adviser and a training officer who will make a joint recommendation with regard to approval or disapproval of the request for change of course. If in any case the chief, education and training section, or designate, does not concur in the recommendation made by advisement and guidance personnel and if agreement cannot be reached as to a joint determination, both sections will make their recommendations simultaneously to the chief, vocational rehabilitation and education division, for decision. After a decision has been made regarding the request for a change of course, the case will be returned to the education and training section which will notify the veteran of the action taken.

(3) The institution or establishment will be required to notify the Veterans' Administration immediately upon effecting a change of course authorized under paragraph (d) (1) or (2) of this section and with the notification shall furnish the Veterans' Administration complete information as required in paragraph (e) of this section.

(e) Because of the fact that a change of course may affect the amount of tuition or the amount of subsistence allowance to be paid by the Veterans' Administration, when a change of course is effected by the institution, under paragraphs (a), (b), (c), or (d) of this section, the notification to the Veterans' Administration of the change will state at least all the details of the change; including especially a description of the change, the name of the course from which and to which the change has been made; together with the credits attaching to each if a collegiate institution, or the clock hours if not a collegiate institution; and the details of any change in charges, where applicable.

(f) When an enrollee otherwise would have to be discontinued pursuant to the provisions of the second proviso of paragraph 3 (a) of Part VIII and the reason for the veteran's unsatisfactory progress is one of those reasons in § 21.306 (a) (1) or (2), the Veterans' Administration, upon receipt of evidence clearly indicating the desirability of such action, may initiate action to the extent of looking to a change of course.

§ 21.309 *Transfer from one institution to another.* Transfer from one institution to another must receive the prior approval of the Veterans' Administration office having jurisdiction over the territory in which the veteran is enrolled. Application should be made by the enrollee on VA Form 7–1905e, Request for Change of Course and/or Place of Training, or by letter containing the requisite information. If the information submitted in support of the veteran's application indicates that the transfer does not involve a change of course and the institution at which the veteran is pursuing his present course certifies that the veteran's conduct and progress are satisfactory, the request for transfer will be approved, and the issuance of a supplementary certificate will be in order provided that in the case of school enrollees such transfers shall be effected only at the completion of the semester, term, quarter, or other period for paying tuition and shall be subject to statutory limitations as to rate of cost for a school year. If the information supporting the veteran's request indicates that a change of course is involved, the request will be processed in accordance with the policies for approving requests for change of course under § 21.308. If it is indicated that an enrollee's conduct or progress is unsatisfactory, one of the following steps may be taken depending upon the facts in the individual case: (a) If it is determined by the education and training section that the educational or training institution at which the veteran is enrolled is unsuited for providing satisfactory instruction or that there are other compelling reasons for the transfer beyond the control of the enrollee, transfer to another institution will be approved; (b) the enrollee's request may be disapproved—the enrollee to continue at his present institution provided the institution will retain him; (c) the enrollee's education or training may be discontinued; or (d) the enrollee may be allowed to request a change of course.

Furnishing Supplies

§ 21.310 *Definition.* As referred to in §§ 21.310 through 21.325, inclusive, the term "supplies" will include books, tools, supplies, equipment, etc.

§ 21.311 *Legal basis.* The furnishing of supplies for training purposes is authorized under paragraph 5 of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).

§ 21.312 *Authority.* Subject to the limitations set forth in §§ 21.310 to 21.325, regional managers are authorized to furnish, through the school or training establishment or through direct purchase in accordance with current regulations governing the procurement of and accounting for trainee's property, supplies of such kind and in such minimum amounts as are necessary to the satisfactory pursuit of a course of education or training in a particular institution.

§ 21.313 *Prevention of abuse.* The furnishing of supplies is fraught with possibilities of marked abuse. Accordingly, the entire matter of furnishing such articles is to be so administered as to avoid and prevent abuses. Care is to be exercised to make certain that articles will not be furnished to the veteran-trainee which duplicate those which have been previously furnished by the Veterans' Administration or which otherwise are in his possession. There should be indication by the regional office that the trainee's folder has been consulted to determine whether articles have been previously furnished. The provisions of the law and the instructions authorizing the furnishing of supplies are not to be construed as authorization for furnishing supplies except under the most careful checks as to what is required by the training institution of all trainees. Special attention should be given to detect a tendency on the part of any institution or establishment to pad its lists of supplies because the supplies may be paid for by the Government. It is to be emphasized and always borne in mind that the trainee is not to be allowed to determine what supplies will be furnished. An understanding of the law and Veterans' Administration policy on this point and cooperation on the part of the institution or establishment should be encouraged and developed to the end that the institution or establishment will approve for the trainee only those items which it requires other students or trainees to personally possess in order to pursue the training. The training officer will be held responsible for determining, in individual cases, that the list of supplies to be furnished to the trainee by the Veterans' Administration has been determined by responsible officials of the institution rather than by the trainee himself and has been determined on the basis of actual training needs. The chief, education and training section, and supervising training officers will give due supervisory attention to this element of administering the program.

§ 21.314 *General limitations.* (a) The kinds, quality, and amount of supplies that may be furnished to any trainee will be limited to those commonly required by the institution to be personally owned by other trainees not under Veterans' Administration jurisdiction pursuing the same training in the particular institution. Articles which are commonly on hand as equipment of the training institution for use of all students, trainees, or employees are not to be regarded as supplies required to be owned by trainees and will not be furnished.

(b) In those instances where supplies are available in several prices, grades, or qualities, the Veterans' Administration will furnish only articles of such quality or grade as the training institution requires all trainees to have, whether veteran or nonveteran. When it is clear to the regional manager that such quality or grade is greater than necessary for purposes of a particular trainee, he is authorized to limit the quality or grade to that which will meet the needs of the particular case.

(c) Not all the supplies necessary for pursuit of a particular course of training should be furnished at the beginning of the course. Rather the supplies should be furnished as their need becomes clearly evident and imminent. On the other hand, arrangements must be made whereby supplies will be available to the trainee when they are needed.

(d) The Veterans' Administration is obligated only to furnish serviceable equipment. There is no requirement that all items furnished to a trainee shall be new or of any particular manufacturer's brand. There is the obligation that any article furnished shall be in excellent working condition and of such type and quality as the needs of the course demand. Consideration should be given to the issuance of items which are in stock before placing an order for new equipment.

(e) The Veterans' Administration will not replace at Government expense, articles which have been issued to a trainee and which are lost, stolen, misplaced, or damaged beyond repair.

(f) The Veterans' Administration will not reimburse a trainee who personally buys supplies. Payment for supplies is made to the training institution or to the vendor from whom they are purchased by the Veterans' Administration. If the institution chooses to return to the veteran the amounts charged him and paid by him so that the charges by the training institution stand as an unpaid obligation of the Veterans' Administration to the institution, payment may be made if otherwise in order.

(g) When a particular article is furnished for use in more than one subject and the same article is required for use in other subjects or in another quarter or semester or school year, the article furnished will be made to serve for all such requirements and will not be duplicated for such purpose at Government expense.

§ 21.315 *Authority to furnish supplies to trainees in school training.* (a) Under the authority set forth in § 21.312 and subject to the limitations contained in §§ 21.310 to 21.325, the regional manager is authorized to furnish a veteran pursuing a course of education in a school with supplies required by the school to be personally owned by every other student pursuing the same course.

(b) It is the general policy to have schools furnish supplies wherever practicable inasmuch as such practice will facilitate service to the veteran. If the school cannot be induced to furnish supplies, they will be furnished by the Veterans' Administration in the manner prescribed in this subpart for furnishing supplies for training on the job.

§ 21.316 *Authority to furnish supplies to trainees in training on the job.* (a) Under the authority set forth in § 21.312 and subject to the limitations contained in §§ 21.310 to 21.325, the regional manager may furnish a veteran pursuing a course of training on the job with necessary supplies when the aggregate cost of the articles is not in excess of $100.

(b) Supplies for enrollees pursuing courses of training on the job will be purchased under the approved methods of purchase from the on-the-job-training establishment or other commercial sources, whichever is preferable from the standpoint of getting to the veteran the supplies which are necessary to his training, without delays which will or may interfere with entrance into training or progress in training. However, due consideration will be given to the interests of the Government as to cost and quality. When the aggregate cost will be in excess of $100, the articles may be furnished under one of the following conditions:

(1) When the items needed appear on an approved list in vocational rehabilitation and education procedures for the trade or occupation for which a trainee is pursuing training. If an item required by the training establishment is not on the approved list, the regional offices may substitute that item for a corresponding item on the approved list provided that the item substituted will serve the same general purpose and the cost is less than or approximates the usual cost of the item for which substitution is made.

(2) When a request to furnish supplies in excess of $100 has been submitted to the branch office and the approval of the branch office has been obtained. Each request to the branch office for authority to furnish supplies in excess of $100 must be supported by a statement including at least the following:

(i) Job objective and code.

(ii) Indication of the brand, catalog number, and the price of each item for which, or the equivalent of which, approval is requested (to facilitate identifying the item desired).

(iii) An itemized list of supplies so far furnished or on order for the trainee and the cost.

(iv) A definite statement that the institution requires all the requested items to be personally owned by all students taking the same course.

§ 21.317 *Furnishing supplies to veterans pursuing residency courses in hospitals.* (a) Since residency courses are entered upon only by qualified physicians and since qualified physicians, in pursuit of their medical courses and/or in their general practice, ordinarily own the common diagnostic instruments and certain of the texts applicable to general medicine, only books and equipment which are peculiar to the specialty for which the physician veteran is preparing himself will ordinarily be furnished.

(b) For the doctor veteran pursuing a residency course in a hospital the Veterans' Administration may pay for such supplies necessary and required for training purposes as are certified by the physician or physicians responsible for giving the course as being required to be personally possessed by every physician, veteran or nonveteran, pursing the same course, *Provided:*

(1) That such books, supplies, and equipment are not furnished or loaned by the institution.

(2) That in no case will any book or item of equipment be paid for when such article is already in the possession of the veteran.

Adequate assurance will be obtained that the veteran does not own or have available for his use any item requested.

§ 21.318 *Furnishing supplies for training on the job following school training.* When a veteran's course consists of training in a school followed by a period of training on the job following completion of the school portion of his course and it is clear that supplies not previously furnished are going to be needed at the beginning of the on-the-job portion of the course, steps shall be taken sufficiently in advance to insure that the supplies will be available when needed. In no event, however, are the supplies to be issued prior to induction into training on the job, or prior to a clear indication of their need as provided in § 21.314 (c).

§ 21.319 *Furnishing supplies in noncredit courses.* The Veterans' Administration may furnish to an enrollee pursuing a noncredit course, as defined in § 21.301 (a) (1), those supplies required by the school to be owned personally by all students in the same course when the enrollee is required to perform all of the work which all students enrolled for credit must perform in the course excepting taking credit examinations. Supplies may not be furnished to enrollees in "noncredit" courses which require only attendance and listening at class.

§ 21.320 *Furnishing tools.* (a) In the furnishing of tools, the Veterans' Administration will not furnish a full set of tools such as a trained worker would acquire over a period of years or such as to enable him to pursue employment after completion of the course but rather there will be furnished the trainee, as needed, those tools normally required to pursue the course of training.

(b) The Veterans' Administration will not furnish such items as shop tools or shop equipment which are normally provided by the establishment. Tools and equipment in this category are those usually provided by training establishments to be used by their employees when needed and are not required to be the personal property of each.

(c) With particular reference to that training which consists of or includes training on the veteran's own farm or other type of establishment owned or controlled by the veteran, it is to be noted that the veteran's farm or establishment, in order to be acceptable as a place of training must be equipped to give the training as well as otherwise qualified. Accordingly, any supplies furnished in such cases will be limited to classes of items which are furnished veterans pursuing courses at any other training-on-the-job establishment. This will limit the supplies to be furnished to those hand tools and instruments which are required for the teaching of special skills and will preclude furnishing supplies which are commonly on hand as part of the farm equipment or specialized equipment for particular crops or activities.

§ 21.321 *Furnishing clothing.* (a) One of the purposes of a subsistence allowance is to enable the trainee to provide himself with clothing. Therefore, items which are worn in lieu of ordinary clothing will not be classed as articles of training equipment or training supplies. Consequently, gymnasium clothing, laboratory coats and trousers, nurses or technicians uniforms, school or military uniforms, coveralls, and other similar articles will not be provided, notwithstanding the fact that it may be a requirement of the training establishment that clothing of a certain type or style shall be worn by all students, trainees, or employees. Protective articles, such as laboratory aprons, rubber gloves, etc., which are worn primarily for the purpose of protecting the wearer from physical harm as distinguished from protecting his personal clothing may be furnished when they are required for all students taking the same course.

(b) There are many schools, such as military academies, in which veterans may be trained and in which veteran-trainees would be required to wear clothing of a particular style or pattern. Such clothing might constitute the major portion of the wardrobe of the veteran, and if the Government were to furnish the required clothing, it would mean that the Government would pay for all of the outer clothing such a trainee would wear. Similarly, there are veterans training on the job as policemen, firemen, automobile mechanics, and many other occupations in which clothing of a particular type and style is a requirement of the training institution. The furnishing of clothing in such cases would mean that the Government would pay for all of the work clothes of such trainees. Obviously, it is necessary to draw a line between items which will be furnished and items which will not be furnished. Wherever such a line is drawn, there are bound to be borderline cases which are denied and which action may be difficult to defend under the general policy that the Veterans' Administration will furnish those items for training which are required by the institution for all students pursuing the same course. The practicable place to draw the line with respect to furnishing clothing is between items which are not worn in lieu of other clothing and which because of the nature of the course are necessary to protect the health or well-being of the individual and those which are worn in the place of the veteran's principal attire.

(c) Gymnasium pants and gymnasium shoes are worn in lieu of other clothing. When these items are worn, the veteran's street clothes are hanging in a locker at such times they are not subject to wear. If the student is a physical education major, it is presumed that his street clothes will be saved from wear for a great proportion of every day just as the automobile mechanic's clothes are protected while he is attired in the uniform coveralls required by the garage in which he is being trained. Inasmuch as gymnasium clothing is less expensive than street clothing, the veteran whose training course permits him to wear such clothing actually has an economic advantage over the veteran whose courses require him to wear dress clothes at all times.

§ 21.322 *Furnishing special items.* (a) Musical instruments, cameras and their accessories, tennis rackets, golf clubs, and any other expensive items which are susceptible of use for personal amusement and recreation will not be furnished unless the item is indispensable to particular major or minor unit courses essential to pursuit of the overall course and the regional manager has satisfied himself that the veteran possesses sufficient interest, aptitude, and talent to promise success in the completion of the course. These conditions will be considered to have been met when veterans under Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12) have elected to receive and have been provided with approved advisement and guidance and the findings clearly indicate that the veteran possesses sufficient interest, aptitude, and talent to promise success in the completion of the course.

(b) Items which are commonly used for personal purposes, such as fountain pens, desk sets, reading lamps, typewriters, brief cases, etc., will not be furnished.

§ 21.323 *Furnishing supplies after completion of education or training.* Supplies which have been approved for a veteran pursuing a course of education or training but which could not be furnished prior to completion of the course due to the inability to obtain delivery, may be furnished after completion of the course, provided there is a clear indication that action was taken early in the veteran's pursuit of the course to obtain the supplies and provided that the veteran is actually pursuing employment in the occupation for which he was trained.

§ 21.324 *Furnishing books, supplies, and equipment to trainees in institutional on-farm training.* The farm on which a veteran receives that part of his course of institutional on-farm training must be equipped with the necessary supplies and equipment which will permit the trainee, even though he is in control of the farm, to pursue successfully institutional on-farm training. Therefore, under no circumstances shall the Veterans' Administration pay for any equipment or supplies which a person may require in order to operate the farm. The Veterans' Administration will pay for only those books and incidental supplies required for the veteran to pursue that part of his course in organized group instruction. Such books and supplies will be limited to those required to be owned personally by all students in such course. Farm equipment or tools will not be furnished since it is considered that these are articles which a farm must have in order to meet the provisions of Public Law 377, 80th Congress.

§ 21.325 *Recovery of training supplies.* (a) Supplies furnished a trainee are deemed released to him and should not be marked to indicate ownership by the United States. A trainee will not be required to return expendable supplies nor will he be required to return non-expendable supplies or to pay the reasonable value thereof in the event he fails to complete his course of education or training unless it be determined that his failure to do so was because of fault on his part and in making such determination the trainee should be given the benefit of every reasonable doubt. Determination of the presence or absence of fault will be made by the chief, vocational rehabilitation and education division, subject to approval or disapproval by the regional manager, and the findings will be filed in the training folder.

(b) In cases which the manager finds to be meritorious, even though the veteran may have been at fault, such items as are being used by the veteran in bona fide employment need not be recovered. Similarly, a veteran may be allowed to retain items which have already served their purpose and the retention would improve the veteran's chance for making practical use of knowledge or skills acquired from the courses completed. As for example, a text book used in a course he has successfully completed or a set of drafting instruments furnished for drafting courses which he has finished.

(c) The veteran will be deemed to be at fault if his training is discontinued:

(1) When he withdraws from the institution at the request of the institution; or

(2) When he abandons his training without prior or concurrent notice to the Veterans' Administration; or

(3) When his course is discontinued following consistently unsatisfactory reports of conduct or progress; or

(4) When the failure to complete the course is due to his negligence or misconduct.

(d) When an enrollee voluntarily discontinues his training after pursuing training for less than three months and/or because his subsistence allowance has been discontinued due to the ceiling, established in paragraph 6 of Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), having been reached, he will be considered to have failed to complete the course because of fault on his part and his case is not to be considered meritorious under the provisions of paragraph (b) of this section. In such cases, however, the veteran will be allowed to retain those items which already have served their purposes, provided that any item so retained shall not again be furnished upon re-entrance into training into any authorized course under Parts VII or VHI.

(e) Supplies which have been recovered from trainees are delivered to the custody of the supply officer. Every effort shall be made to utilize recovered supplies in the custody of the supply officer.

Leaves of Absence

§ 21.340 *Introduction.* Pursuant to the provisions of paragraph 6, Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), a veteran, while enrolled in and pursuing a course of education or training under Part VIII, may be granted leave of absence where such leave will not materially interfere with the veteran's progress in his course. The provisions of §§ 21.341 to 21.348 pertain solely to leave of absence for Part VIII enrollees pursuing courses at training-on-the-job establishments or at schools other than institutions of higher learning. They do not apply in any particular to enrollees pursuing courses at institutions of higher learning. The policy governing leaves of absence for enrollees in institutions of higher learning is set forth in § 21.346.

§ 21.341 *Accrual of leave.* Leave will accrue at the rate of 2½ days per month during the entire time a veteran is enrolled in and pursuing a course of education or training, including that time during which he is on approved leave of absence, except that no leave will accrue after completion of the course or for periods of leave following which the veteran fails to resume training. Leave will not be accumulated to an amount in excess of 30 days. Accumulated leave will

not be forfeited through interruption of the course. It may be carried over from one period of enrollment to another. Unused accumulated leave to a veteran's credit upon completion of an elected course may be granted immediately after completion of the course if applied for by the veteran preferably at least 30 days preceding the end of the course. If unused accumulated leave is not applied for and taken immediately upon completion of the course, it may remain credited to the veteran and used by him upon subsequent enrollment in another course under either Part VII or Part VIII, Veterans Regulation 1 (a) as amended (38 U. S. C. ch. 12).

§ 21.342 *Granting of accrued leave.* Managers are authorized to approve leave of absence which will not exceed the amount of leave accumulated to the credit of the individual and which in no case will exceed 30 days in each 12 successive months of enrolled status beginning on the date of the veteran's commencement of his training: *Provided,* That according to the standards and practices of the school or training-on-the-job establishment, the granting of such leave will not materially interfere with the veteran's progress in his course. Enrollees pursuing school courses and desiring leave at the end of a school year must apply for such leave at least 30 days before the end of the school year.

§ 21.343 *Granting of advance leave.* Ordinarily, enrollees should not be permitted to overdraw their accrued leave. The manager, however, is authorized to approve leave of absence in excess of the veteran's accrued leave provided that such leave is required by reason of personal illness, illness in the enrollee's immediate family, or other compelling conditions beyond the control of the enrollee, and when denial of such leave would result in undue personal hardship to the veteran, and, provided further, that the aggregate amount of leave granted shall not exceed 30 days in each 12 successive months of enrolled status beginning on the date of the veteran's commencement of his training. Extreme caution should be observed in approving advance leave since a monetary recovery may be necessary in the case of an enrollee who discontinued training at a time when his leave account is overdrawn.

§ 21.344 *Charging of leave.* An approved absence covering a period of less than the standard school or work-week of the training institution or establishment will be charged against leave at the rate of one day for each school or working day of absence from the institution. An approved absence covering a period of one calendar week or more will be charged at the rate of five days for each seven consecutive days of absence. No charge against leave will be made for absences on regular holidays. Regular holidays are those days within a period of training on which the school or training establishment grants total exemption from attendance to all students or enrollees in the same course. For enrollees pursuing courses in schools, this will include school holidays and short intermissions between terms or periods of instruction within the ordinary school year (not vacation periods between school years): *Provided,* That the veteran was enrolled for the two successive terms.

§ 21.345 *Unauthorized absences.* Enrollees should be instructed that they will be expected to apply for and obtain, in advance, approval for leave of absence. However, when a veteran has absented himself from his place of training under conditions which would make his obtaining of advanced approval from the Veterans' Administration impracticable; and when the responsible officials of the training establishment have certified that the absence did not constitute and was not due to unsatisfactory conduct and did not materially interfere with the veteran's progress in his course, the manager is authorized to excuse the absence and to make charges against the veteran's accumulated leave in accordance with the policy stated above. When such absence is not satisfactorily explained, the regional office manager will take such action as is deemed necessary, including forfeiture of subsistence allowance for the days of absence.

§ 21.346 *Leaves of absence for veterans in institutions of higher learning.* (a) A veteran enrolled in and pursuing a course of education or training in two consecutive terms, the current term and the next ensuing term, at an institution of higher learning and who has been in regular attendance through to the end of the term (semester, quarter, or summer session) just concluding or concluded shall be considered to be in training status while pursuing his course and during not to exceed fifteen consecutive days of any period between the two consecutive terms in which the veteran is enrolled but such a veteran shall not be entitled to any leave in addition to those periods except such other days within terms as are granted by the institution to other students. During any period of enrollment the veteran shall be considered to be in attendance unless absent under circumstances which the institution considers to constitute unsatisfactory conduct or progress and the institution so indicates to the Veterans' Administration. Subject to remaining statutory entitlement, the training status of a veteran who fails to attend the next succeeding term of the institution in which he is enrolled will be terminated 15 days from the date of the closing of the preceding term unless the veteran's training is interrupted prior to the expiration of the term or unless the veteran at a time not later than 30 days preceding the regularly scheduled end of the term notifies the Veterans' Administration in writing that he desires his training status to be interrupted at the end of such term or semester.

(b) In the case of a part-time student, the extension of training status specified in paragraph (a) of this section, will be for the fifteen consecutive days and subsistence allowance and charges against entitlement will continue unchanged at the corresponding part-time rate.

(c) The extension of training status referred to above will not be applicable in any case where the veteran interrupts training or is discontinued at any time prior to the end of a term. In such cases training status will be terminated as of the effective date of the interruption.

(d) Leave will not be authorized for any period in addition to the extension of training status herein provided.

§ 21.347 *Leave for veterans pursuing a course of institutional on-farm training.* A veteran who pursues a course of institutional on-farm training shall be entitled to that leave which the approved institution grants to other students but not in excess of 30 days provided such leave does not interfere with the progress of the trainee. No attendance reports need be made to the regional office.

§ 21.348 *Charges against entitlement because of leave.* The veteran's entitlement is charged for all time during which he is paid subsistence allowance. Also, incident to the provisions of the second proviso, paragraph 2, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), it may be to the advantage of the veteran to conserve his entitlement. Therefore, except as provided in § 21.346, for enrollees in institutions of higher learning, the veteran who is absent from training for reasons which would warrant approval of such absence and the charging of leave therefor should not be routinely charged with leave but rather should be given an opportunity to choose between leave of absence and interruption of training for the period of absence.

Tutoring

§ 21.350 *General.* (a) When a veteran, who is enrolled in and pursuing a course of education or training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), requires special tutoring not generally required for the successful pursuit and completion of the course by other students in the institution to meet the regularly prescribed standards of the institution, such tutoring will not be provided at Government expense inasmuch as such a cost cannot be considered as either "customarily charged" or "generally required" as set forth in paragraph 5, Part VIII. Similarly, if an institution finds that a veteran does not meet the established entrance requirements but accepts him as a student subject to his receiving special tutoring during the pursuit of his course, such tutoring will not be provided at Government expense.

(b) Tutoring, as referred to above, does not apply to individualized or tutorial methods of instruction which are employed by some institutions for all students pursuing the same course inasmuch as any required or elective unit course listed in the official publication of the institution may be taken by the veteran regardless of the method of instruction employed by the institution. Neither does it apply to those situations where the institution makes adjustments in its course to meet the needs of veterans in the form of special classes which become part of the course.

Termination of Training

§ 21.351 *Termination of training categories.* Terminations of training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), are classified in four categories: Course completed, interrupted, discontinued and entitlement exhausted.

§ 21.352 *Status "course completed."* An enrollee under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), shall be placed in status "Course Completed" when he has pursued his elected course to its completion: *Provided,* That if there is definite indication that the enrollee will enroll in another course, he will be terminated and carried in status "Interrupted."

§ 21.353 *Status "interrupted".* An enrollee will be placed in status "Interrupted" for all temporary absences from training except absences on approved leave of absence and absences on regular holidays as provided for in paragraph 6 of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), (see § 21.344).

§ 21.354 *Status "discontinued".* (a) An enrollee under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), shall be terminated and placed in status "Discontinued" when it is determined that any one of the following conditions exists:

(1) The enrollee is in status "Interrupted" and it is indicated that he will not return to training. This condition is assumed to exist when an enrollee has been in status "Interrupted" for 4 months.

(2) The conduct or progress of the enrollee is unsatisfactory, according to the regularly prescribed standards and practices of the institution and an adjustment in the case such as changing the course of instruction or transferring to another approved institution, does not promise accomplishment of the purposes of Part VIII.

(3) It is established that the determination of eligibility under Part VIII is based on fraud, error of law, confusion of names, or misfiling of papers, or that the enrollee never met the requirements of eligibility, or that fraud was practiced in any application for education or training, or for subsistence allowance.

(b) In cases of discontinuance of training, under paragraphs (a) (2), or (3) of this section, the training officer shall ascertain and record the facts together with evidence justifying the discontinuance of the course.

§ 21.355 *Status "entitlement exhausted".* (a) An enrollee under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), is placed in "entitlement exhausted" status when his entitlement has been exhausted: *Provided,* That wherever the period of eligibility ends during a quarter or semester and after a major part of such quarter or semester has expired and the enrollee continues successfully to pursue his course, such period is extended to the termination of such unexpired quarter or semester.

SUBPART C—TRAINING FACILITIES

APPROVAL OF INSTITUTIONS AND TRAINING ESTABLISHMENTS UNDER PUBLIC LAW 16, 78TH CONGRESS, FOR PART VII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.400 *Manager, regional office, authorized to approve institutions.* The manager of a regional office is authorized, with the exception of correspondence courses, to approve public or private educational institutions in his territory for providing courses of training to carry out the purpose of Public Law 16, 78th Congress, subject to the following conditions:

(a) *Inspection and accreditation.* The chief, vocational rehabilitation and education division, will certify to the manager on the basis of adequate investigation that the institution is clearly qualified as to space, equipment, instructional material, and personnel to give the required course or courses and has agreed to cooperate fully with the Veterans' Administration by reporting trainees' attendance, performance, and progress in training.

(1) Adequate investigation will include a personal investigation of the institution or establishment by a qualified member of the training facilities section, followed by a written report to the chief, vocational rehabilitation and education division, stating the facts favorable and unfavorable.

(2) If an educational institution is accredited by one of the following recognized national or regional educational accrediting associations, such accreditation may be accepted, if desired, in lieu of a personal inspection:

American Association of Teachers' Colleges.
American Association of Theological Schools.
American Bar Association.
American Council on Pharmaceutical Education.
American Osteopathic Association.
Association of American Universities.
Council on Dental Education, American Dental Association.
Council on Medical Education and Hospitals, American Medical Association.
International Association of Boards of Examiners in Optometry.
Middle States Association of Colleges and Secondary Schools.
National Association of Schools of Music.
National League of Nursing Education.
New England Association of Colleges and Secondary Schools.
North Central Association of Colleges and Secondary Schools.
Northwest Association of Secondary and Higher Schools.
Southern Association of Colleges and Secondary Schools.

(3) If a manager desires to use other associations in lieu of personal inspection, prior approval of the association by central office is required.

(b) *Use of State approved schools for Part VII, Veterans' Regulation 1 (a), as amended, (38 U. S. C. ch. 12), when the institution has not been refused approval for use under Public Law 346, 78th Congress, as amended, for Part VIII, Veterans' Regulation 1 (a), as amended, trainees.* If it is desired to place a disabled veteran in a school, the name of which is not on the list of institutions approved by the State approving agency for education and training for Part VIII, the manager will request a statement from the State approving agency indicating whether it has refused to approve the school. If the school has not been disapproved under Part VIII, the manager may proceed to approve it. If the State approving agency has disapproved a school for use for Part VIII trainees and despite this the manager wishes to use such institution for Part VII trainees, he will request authority of central office, via the deputy administrator, to do so. In so doing, the manager will explain why the institution is disapproved and why, in spite of its disapproval by the State approving agency, the institution should be approved by central office. The deputy administrator will review the report and forward it to central office with appropriate recommendation. Authority to approve an institution for use for Part VII trainees will not constitute approval for its use under Part VIII.

§ 21.401 *Authority to approve and to make arrangements with establishments for training on the job.* The manager, assistant manager, or chief, vocational rehabilitation and education division, of a Veterans' Administration field office having regional office activities is authorized to make arrangements and agreements with establishments, private and public, within his regional territory, to furnish apprentice training or other training on the job as a means of accomplishing the vocational rehabilitation of disabled veterans as provided by Public Law 16, 78th Congress, under the following conditions:

(a) When, on the basis of adequate investigation, the establishment shows excellent promise of efficiently training the veteran to a point of satisfactory employability in the chosen employment objective. The factors which are to be considered as constituting excellent promise of satisfactory training will include:

(1) Existence in the establishment of space, equipment, instructional material, and instructor personnel, adequate in kind, quality, and amount for the desired training in the particular case.

(2) Full acceptance by the establishment of the obligation to give training in all of the constituent parts of the training program which has been prepared for the particular veteran.

(3) Willingness on the part of the establishment to cooperate with the Veterans' Administration in the supervision of the trainee by the Veterans' Administration training officer and to execute report forms covering the trainee's attendance, performance, and progress in training.

(b) When the establishment agrees to furnish to the Veterans' Administration monthly, a statement in writing, as required by paragraph 3, section 2, Public Law 16, 78th Congress, showing wages, compensation, or other income paid directly or indirectly by the establishment to a veteran in training during the month as a wage compensation or other income.

(c) When the establishment indicates a willingness to enter into written agreement of the matters covered by paragraphs (a) and (b) of this section, by signing in duplicate an agreement captioned Agreement to Train on the Job Disabled Veterans of World War II (VA Form 7–1904).

(d) Provisions of the Fair Labor Standards Act of 1938, Public Law 718, 75th Congress, require an employer, as a statutory obligation, to pay to any person, not specifically exempt, who is suffered or permitted to work in commerce or in the production of goods for commerce, without regard to other source of income, a minimum wage of 40 cents per hour or a subminimum hourly wage rate which the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, may approve for handicapped workers under section 14 of the act. Similarly, the Walsh-Healey Public Contracts Act, Public Law 846, 74th Congress, requires that all persons employed by a contractor on work subject thereto be paid not less than the applicable minimum wages as determined by the Secretary of Labor. When the hours of employment-training exceed 40 in any one workweek (or 8 in any 1 day, if the work performed is subject to the Public Contracts Act), the overtime provisions of the acts are applicable.

(e) When a prospective employer-trainer, as a condition precedent to his acceptance of a trainee for training on the job, indicates he will not meet the minimum wage requirements of the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act, the use of such training establishment will not be favorably considered unless:

(1) Other opportunities for the desired training do not exist or are not available in the veteran's community.

(2) The trainee's disabilities preclude initial entrance into training at the minimum wage otherwise applicable.

(f) When, after investigation, the above conditions are found to exist, the chief, vocational rehabilitation and education division, is authorized to approve induction in training on the job at subminimum rates. To accomplish this purpose, the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, has delegated to the vocational rehabilitation officers of the field stations having regional office activities authority to issue to a prospective employer a temporary certificate for each trainee valid for a period of not longer than 3 months from the date of issuance, authorizing the employment-training of a trainee at an hourly wage rate not less than 75 percent of the applicable minimum wage unless after investigation a different wage rate appears to be clearly justified. In exceptional and unusual cases, the chief, vocational rehabilitation and education division, may authorize employment-training at lower rates. A certificate, however, should not necessarily be issued at a rate as low as 75 percent of the minimum. In each case, the rate should be set at a figure designed adequately to reflect the individual trainee's earning capacity.

(g) Payments made on a piece rate basis to a trainee in training on the job must be at the rate paid nonhandicapped employees in the same occupation, but in no case less than the hourly wage rate set forth in the certificate.

§ 21.402 *Establishments-inclusion of joint apprenticeship committees.* For the purposes of Public Law 16, 78th Congress, joint labor-management committees may be recognized as training institutions when it is found that the establishments which any such committee utilizes for training are actually qualified to provide a satisfactory course of training on the basis of adequate space, equipment, and instructor-personnel and that the joint committee is performing the functions delegated to it in a satisfactory manner. (See comment regarding use of such committees under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), and § 21.412 (d)).

§ 21.403 *When to make approvals; Public Law 16, 78th Congress.* Institutions and establishments will be approved for education or training as the need develops for a definite course or courses. This does not mean that it is necessary to wait until a particular veteran is ready for induction. There must be reasonable assurance, however, that the institution or establishment will be utilized. Approval may cover any number or all of the courses or job objectives offered by an institution or establishment which it is expected will be utilized even though the need for such courses is not present at the time the proposal is made.

§ 21.404 *Approval must precede induction into training.* Trainees will not be entered into training until an institution or establishment has been approved by the Veterans' Administration.

EDUCATIONAL AND TRAINING INSTITUTIONS UNDER PUBLIC LAW 346, 78TH CONGRESS, FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12), TRAINEES

§ 21.412 *Institutions and training establishments for education and training-inclusion of schools, colleges, and business, industrial, and other establishments.* (a) Educational institutions will be considered as schools or colleges, as distinguished from training institutions, when that part of the institution in which the veteran is enrolled as a student is operated solely to give courses of instruction to students. Such schools and colleges may be public or private and will include those listed in paragraph 11, section 400, title II, Public Law 346, 78th Congress, as amended.

(b) Training institutions to be used for training on the job will consist of business, agricultural, and industrial enterprises, governmental agencies, educational and medical institutions, or other establishments which provide apprentice training or other training on the job, including especially those under the supervision of any State apprenticeship council, State apprenticeship agency, or Federal Apprentice Training Service, when the enrollee's course leads to the development of the desired skills and knowledges.

(c) Public Law 346, 78th Congress, as amended by Public Law 679, 79th Congress, prescribes the following with respect to "other training on the job":

(1) Any establishment desiring to undertake an on-the-job-training program will be required to submit to the appropriate State approving agency a written application setting forth the course of training for each job objective for which a veteran is to be trained.

(2) The appropriate approving agency of the State or the Administrator may approve the application of the establishment when such establishment is found upon investigation to have met or made provision for meeting the following criteria:

(i) The training content of the program is adequate to qualify the veteran for appointment to the job for which he is to be trained.

(ii) There is reasonable certainty that the job for which the veteran is to be trained will be available to him at the end of the training period.

(iii) The job is one in which progression and appointment to the next higher classification are based upon skills learned through organized training on the job and not on such factors as length of service and normal turn-over.

(iv) The wages to be paid the veteran for each successive period of training are not less than those customarily paid in the establishment and the community to a learner in the same job and who is not a veteran and are in conformity with State and Federal laws and applicable bargaining agreements.

(v) The job customarily requires a period of training of not less than 3 months and not more than 2 years of full-time training.

(vi) The length of the training period is no longer than that customarily required by the establishment and other establishments in the community to provide the trainee with the required skills, and to arrange for the acquiring of job knowledge, technical information, and other facts which the trainee will need to learn in order to become competent on the job for which he is being trained.

(vii) Provision is made for related instruction for the individual veteran who may need it.

(viii) There is in the establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on the job.

(ix) Adequate records are kept to show the progress made by the veteran toward his job objective, and a periodic report showing the conduct and progress made in the course of training on the job will be provided for the Veterans' Administration.

(x) Appropriate credit is given the veteran for previous job experience, whether in the military service or elsewhere, his beginning wage adjusted to the level to which such credit advances him and his training period shortened accordingly. No course of training will be considered bona fide if given to a veteran who is already qualified by training and experience for the job objective.

(xi) A copy of the training program as approved by the State agency is provided to the veteran and to the Veterans' Administration by the employer.

(xii) Upon completion of the training, the veteran is given a certificate by the employer indicating the length and type of training provided and that the veteran has completed the course of training on the job satisfactorily.

(d) The Administrator has determined that joint apprenticeship committees or similar labor-management committees may be recognized as educational or training institutions within the meaning of paragraph 4, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), provided the appropriate agencies of the States in which such committees function have so recognized them.

(1) Whenever in a given craft a joint labor-management committee has been charged with the responsibility for controlling the training of persons in standard apprentice courses, such committee may be considered to be the training institution provided it has been approved by the appropriate State agency. The committee's assigned responsibility may include the acceptance of an applicant for apprenticeship training, the determination of the establishment or establishments in which the training is to be provided, the arranging for the placement of the applicant in the chosen establishment, the determination that the establishment provides the prescribed course in accordance with the accepted standards, and that the applicant continues diligently to apply himself to the course and efficiently to accomplish its purposes. The existence of such an arrangement presumes that it is with the full agreement of management and labor and that the arrangement has become the accepted means through which all applicants are started on and carried through a standardized course of apprentice training.

(2) As a rule, such joint committees do not actually give education in the strict sense of the term since the education is being provided by business establishments. It may be presumed for the time being, however, that the appropriate agencies of the respective States will have determined in advance that each joint committee which it approves is actually performing the functions for which it was established in an efficient manner and is arranging for training in establishments which are adequately equipped and staffed to provide complete and well-rounded courses of instruction. It is on this assumption that the Administrator determined that joint apprenticeship committees may be recognized as qualified and equipped to provide suitable training to veterans under Public Law 346, 78th Congress, as amended, in those States in which recognition has been granted.

APPLICATION OF THE PROVISIONS OF THE SERVICEMEN'S READJUSTMENT ACT, TITLE II, AS AMENDED BY PUBLIC LAW 377, 80TH CONGRESS, APPROVED AUGUST 6, 1947

§ 21.413 *Policy governing approval of institutional on-farm courses.* (a) The appropriate agency of the State shall determine whether an educational or training institution is qualified to furnish institutional on-farm training and whether the courses which such institutions furnish are in accordance with the standards prescribed in Public Law 377, 80th Congress. Authority given the Administrator to approve institutions initially will be exercised only under extraordinary circumstances.

(b) A list of the training institutions approved by the appropriate agency of the State together with the courses of instruction approved by the appropriate agency of the State will be transmitted by such agency to the Manager of each regional office of the Veterans' Administration in the State. An appropriate certified statement that institutions and courses approved prior to September 1, 1947, comply with Public Law 377 will be acceptable.

(c) The State approving agency shall be responsible for assuring that all courses for institutional on-farm training which have been approved continue to meet the requirements of Public Law 377, and, when the agency finds that such courses do not meet the requirements of such law, it will notify the Veterans' Administration immediately in order that subsistence allowance and tuition payments for any veteran pursuing such course may be discontinued effective as of the date of such finding by the State approving agency. Where it is found by a Veterans' Administration Manager that the State approving agency fails to discontinue a course which does not meet the requirements of Public Law 377, the manager shall take immediate action to discontinue subsistence allowance and tuition payments in the case of any veteran pursuing such a course.

(d) The term "farm or other agricultural establishment" shall mean those places where the farm is operated for the purpose of raising and harvesting fruits and vegetables and crops and/or the breeding and management of poultry and livestock. Training which is given on farms as herewith defined shall be classified as institutional on-farm training and such training shall conform to the provisions of Public Law 377. Institutional on-farm training will not apply to training in those establishments which are engaged exclusively in either the processing, distribution, or sale of agricultural products, or combination thereof, such as dairy processing plants, grain elevators, packing plants, hatcheries, stockyards, and florist shops. These must qualify under Public Law 679, 79th Congress.

(e) The approved institution which is offering the approved course of institutional on-farm training in accordance with the provisions of Public Law 377 shall permit only those veterans to enter such courses where it finds and reports to the Veterans' Administration:

(1) In the case of the veteran who performs part of his course on a farm under his own control:

(i) That the farm is properly equipped.

(ii) The size and quality of the farm is such that it will be a satisfactory facility for his training and productive enough to insure the trainee an income sufficient under normal conditions for reasonable living at least by the end of the training program.

(iii) The course meets the particular needs of the individual veteran in the type of farming for which he is training, for proficiency in planning, producing, marketing, farm mechanics, conservation of resources, food conservation, farm financing, farm management, and the keeping of farm and home accounts.

(iv) That the veteran is assured control of such farm at least until the completion of his course.

(2) In the case of the veteran who performs part of his course as the employee of another:

(i) That the farm is properly equipped.

(ii) That the farm is of a size and character which will occupy the full time of the veteran and permit instruction in all aspects of the management of a farm of the type for which the veteran is being trained.

(iii) The course meets the particular needs of the individual veteran in the type of farming for which he is training, for proficiency in planning, producing, marketing, farm mechanics, conservation of resources, food conservation, farm financing, farm management, and the keeping of farm and home accounts.

(iv) That his employer has agreed to instruct him in various aspects of farm management in accordance with the training schedule developed for the veteran by his instructor working in cooperation with his employer.

(f) No course of institutional on-farm training will be approved for a veteran who is already qualified by training and experience for the course objective.

(g) The duration of an approved course shall be as long as, but no longer than, necessary to attain the objective of the course outlined to meet the particular needs of the individual veteran. (The 2-year limitation of Pub. Law 679 does not apply to training under this program.)

(h) A course of institutional on-farm training shall provide for continuous training for the duration of the course and shall be pursued on a full-time basis as defined by Public Law 377.

(i) The approved institution offering the approved course of institutional on-farm training shall be responsible for supervising the veteran while in training and evaluating his accomplishments and for determining and notifying the Veterans' Administration immediately when the veteran-trainee's conduct or progress is not satisfactory, such as to raise a question as to the desirability of his continuance as a trainee or when the veteran ceases to be in attendance.

(j) A veteran who has applied for a course of institutional on-farm training shall not be permitted to begin his course for the purpose of receiving subsistence allowance or the payment of tuition until his individual course which meets his needs has been outlined and approved by the approved school; nor will the veteran be permitted to enter a class which has already been organized and the course of instruction has begun un-

less the approved institution is satisfied that the veteran will be able to complete the approved course, and not impede the progress of other trainees, in the time allotted to such class.

(k) The number of veterans who may be processed into training under a self-proprietorship or self-control arrangement on a single farm ordinarily will be limited to one. However, in a particular case, where an approved training institution and the Veterans' Administration have found that conditions are so highly favorable as to assure the success of two veterans for training and subsequent self-employment on the same farm, two, but not more than two, may be processed into or continued in training on a single farm: *Provided,* The training situation with reference to each veteran meets in every respect the criteria set forth in Public Law 377, 80th Congress, and this section: *And provided further,* That there is furnished documentary evidence that the two veterans have entered into a bona fide partnership agreement which provides for equal authority between the partners in the management and operation of the farm. Under no circumstances will a veteran be processed into training as an employee-trainee on the farm of another person who is himself enrolled as a trainee. Where it is proposed to train more than one veteran on a farm under an employer-trainer or where the employer-trainer is a near relative, the institution should exercise extreme care to determine that a bona fide training situation will exist for the individual veteran.

(l) A veteran who pursues a course of institutional on-farm training shall be entitled to that leave which the approved institution grants to other students but not in excess of 30 days provided such leave does not interfere with the progress of the trainee. No attendance reports need be made to the regional office.

§ 21.414 *Application.* A veteran desiring to elect a course of institutional on-farm training shall fill out VA Form 7–1921, Application for Course of Institutional On-Farm Training, and transmit such application to that institution which has been designated by the appropriate agency of the State responsible for offering institutional on-farm training courses in his locality. Upon receipt of this application, this institution will determine the course of training which the veteran needs and the type of farming for which he needs training after giving due consideration to the size and character of his farm. The institution will indicate its approval on this form and transmit it through channels designated by the State approval agency to the proper regional office of the Veterans' Administration. Upon the receipt of this form by the Veterans' Administration, it will determine whether the veteran meets the eligibility requirements of Public Law 346, as amended, and, if the veteran is eligible, the Veterans' Administration will notify the institution through the channels designated by the State approval agency of the beginning date of his subsistence allowance and the period of his entitlement. The effective date of entrance into training will be that date on the application certified to by the approved institution as the beginning date of his course. If the veteran fails to begin the approved course of training, the institution will report this fact to the regional office of the Veterans' Administration through the channels designated by the State approval agency in order that subsistence allowance may not be paid to the veteran.

§ 21.415 *Review.* (a) All veterans who are now pursuing institutional on-farm training courses under Public Law 346, 78th Congress, will be required to fill out VA Form 7–1921 in accordance with the procedure outlined in § 21.414 in order to determine whether such courses which are now being pursued are in accordance with the provisions of Public Law 377, 80th Congress, or this may be done by blanket certification by the approving agency or approved institution for all cases which on September 1, 1947, conform to the provisions of Public Law 377.

(b) In those States having or instituting approved institutional on-farm training courses, all courses in on-the-job farm training must be reviewed by the appropriate agency of the State in order to determine that such courses are in accordance with the provisions of Public Law 377 and certification made by the approved institution that such courses have been approved by the appropriate agency of the State as meeting the provisions of Public Law 377. If, in any individual case, such course cannot be made to comply with the requirements of Public Law 377, it may nevertheless be pursued to completion under the provisions of Public Law 679, 79th Congress; but in no event will new enrollments in such States be made in farm training except in accord with the provisions of Public Law 377 and these regulations. The review required in this paragraph and certification to the Veterans' Administration must be accomplished as soon after September 1, 1947, as is possible but in no event later than January 1, 1948.

(c) In reviewing the cases of veterans now pursuing courses of institutional on-farm training or on-the-job farm training, the provisions of § 21.413 (d) will be applied.

EDUCATIONAL AND TRAINING INSTITUTIONS

§ 21.418 *Approval and disapproval of educational institutions and business or industrial establishments by State approving agency or Administrator.* Institutions and establishments in which education or training is provided must be approved by the appropriate State approving agency in which they are located, or by the Administrator of Veterans' Affairs, as being qualified and equipped to furnish education or training in accordance with Public Law 346, 78th Congress, as amended.

(a) The appropriate State approving agency, or agencies, designated by the governor will have sole authority to approve educational or training institutions within its State, other than Federal agencies and establishments and except as provided in paragraph (b) of this section.

(b) Authority given the Administrator to approve additional educational or training institutions will be exercised only under extraordinary circumstances. In requesting the Administrator's approval of such institutions or establishments, the manager will submit a report through the branch office setting forth the circumstances necessitating the request and showing that a complete investigation has been made which indicates that the institution is qualified and equipped to offer the desired courses in accordance with the standards set up for approving a training facility for use under Public Law 16, 78th Congress, and that in the case of "other training on the job," the establishment meets the requirements of Public Law 679, 79th Congress. The branch office will forward the report to the Assistant Administrator for Vocational Rehabilitation and Education, Washington 25, D. C., together with the recommendation of the branch office relative to approval or disapproval.

(c) When the manager of a Veterans' Administration regional office receives a notice from a State approving agency that a course of training or an institution or establishment in which veterans are enrolled has been removed from the approved list by the State approving agency, prompt action will be taken as follows:

(1) Where the disapproval is of a school:

(i) The manager will request a statement from the state approving agency as to the reasons for the removal of the institution from the approved list and determine whether there is a likelihood that such institution will be reapproved within a reasonable length of time.

(ii) The chief, training facilities section, will assign a training facilities officer or cause a qualified employee to visit the institution for the purpose of determining whether the evidence indicates a definite intention and effort on the part of the institution to correct the inadequacies which necessitated revocation of its approval as well as the ability of the institution to correct such inadequacies within a reasonable length of time.

(iii) The manager will, upon recommendation of the chief, vocational rehabilitation and education division, set a specified date, not to exceed 60 days from the date of revocation of approval, after which no further payments by the Veterans' Administration are to be made to the institution or to the veterans in training therein, unless reapproval is received in the Veterans' Administration regional office by the expiration date.

(iv) The manager will submit a full report to the deputy administrator on the action of the State approving agency. The deputy administrator will forward the report to the Assistant Administrator for Vocational Rehabilitation and Education, Veterans' Administration, Washington 25, D. C., and when conditions warrant such action, the deputy administrator will request the Administrator's authority to continue subsistence allowances and other payments, if any, beyond the 60-day period.

(v) The institution will be notified by letter that the Veterans' Administration

will discontinue all payments to the institution as of the expiration date unless a notice of reapproval from the State approving agency is received in the Veterans' Administration regional office by the expiration date.

(vi) Each veteran in training in the institution will be notified by letter that payments to him by the Veterans' Administration will terminate as of the expiration date unless he effects a transfer to an approved institution or establishment by the expiration date or unless a notice of reapproval from the State approving agency is received in the Veterans' Administration regional office by the expiration date.

(vii) In the event the institution is also approved for training under Public Law 16, the manager will determine whether the Veterans' Administration will revoke its approval of the institution, and if such action is taken, the institution and each Public 16 veteran in training therein will be notified of such action and every effort will be made to effect the prompt transfer of each veteran to another approved institution offering the same course of training so that the training of each veteran may be continued without interruption.

(2) Where the disapproval is of a training-on-the-job establishment:

(i) The same procedure will be followed as in the case of institutions when the revocation of approval by the State approving agency is based upon reasons other than failure to meet the criteria of paragraphs 11 (b), 1 and 2, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12). (See § 21.412 (c).)

(ii) Each veteran enrolled in the establishment will be notified that, in view of the revocation of approval by the State approving agency, the Veterans' Administration will discontinue all payments to the veteran unless he effects immediate transfer to an approved institution or establishment.

(iii) When the revocation of approval by the State approving agency is based upon failure to meet the criteria of paragraphs 11 (b), 1 and 2, Veterans' Regulation 1 (a), as amended, the provisions of paragraph 11 (b), 3 of that law will apply.

§ 21.419 *Relation to State approving agency.* "No department, agency, or officer of the United States, in carrying out the provisions of this part, shall exercise any supervision or control, whatsover, over any State educational agency, or State apprenticeship agency, or any educational or training institution. * * *" (Veterans' Regulation No. 1 (a), as amended by paragraph 8, Part VIII, title II, Pub. Law 346, 78th Cong.). Therefore, no supervision or control may be exercised by any representative of the Veterans' Administration over any State approving agency. In all dealings with State approving agencies, Veterans' Administration personnel will refrain from any intimation which may be construed as an attempt to supervise or control the agency.

(a) Cooperation, when requested, will be given State approving agencies by Veterans' Administration branch and regional office personnel wherever possible. Such information as may be desired by the State approving agency concerning any educational or training institution and any standards being used in connection with selecting training facilities under Public Law 16, 78th Congress, will be supplied upon request. It must not be assumed by the State approving agency, however, that the Veterans' Administration will be responsible for approving such institutions under Public Law 346, 78th Congress, as amended.

(b) Full information concerning the inadequacy of any approved institution or establishment which has been called to the attention of the manager will be immediately presented to the appropriate State approving agency and the branch office for whatever action it or the branch office deems desirable.

§ 21.420 *Extent of supervision of schools or colleges.* (a) Pursuant to the terms of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), schools and colleges being utilized for purposes of education or training will not be subject to any supervision or control whatsoever by the Veterans' Administration. It is presumed and expected that the designated State approving agency will approve only such institutions as are fully qualified and equipped to give good courses of instruction and are otherwise satisfactory on the basis of current inspection, well-established service, and reputation to furnish effective education and training. It is also presumed that approved institutions will accept only veterans who are qualified to pursue the courses they select. It is also presumed that the State approving agencies themselves will maintain such supervision over approved institutions as may be needed.

(b) Representatives of the Veterans' Administration, as required by law, will carefully refrain from assuming any responsibility for any training program elected by a veteran enrolled under authority of title II, Public Law 346, 78th Congress, and from overseeing or directing any of the practices of any school or college insofar as they relate to a veteran enrolled under that law. However, assistance of an advisory nature may be given when requested by the institution.

(c) The following will not be considered as supervising or controlling the institutions:

(1) Requests for information concerning the component parts of a course offered by a school or college.

(2) Obtaining such information as is necessary to determine whether an institution is qualified or equipped to furnish training.

(3) Determination of wages or salaries to be paid.

(4) Determination as to adequacy of space, equipment, and instructional personnel.

(5) Verification of charges made by the institution to the Veterans' Administration.

§ 21.421 *Related training taken in another regional area when claims and R&E folders are located in regional office having jurisdiction over principal trainer.* (a) When a veteran in training under Public Law 346, 78th Congress, takes related training in an adjacent area of another regional office, the claims folder and the R&E folder will be retained in the regional office having jurisdiction of the area in which the principal trainer is located. The training facilities section in the regional office having jurisdiction over the area in which the principal trainer is located, upon notification by the registration and research section, will determine whether the institution at which it is proposed to give a related instruction is approved by the appropriate State-approving agency. If no evidence of such approval is available, the training facilities section in the regional office having jurisdiction over the principal trainer will request the training facilities section in the regional office having jurisdiction over the secondary trainer to determine whether the secondary institution has been approved or disapproved by the appropriate State agency. If the secondary institution has never previously been approved or disapproved by the State agency, the training facilities section will take such measures as necessary to initiate State agency survey and decision and any required contractual arrangements. A certification as to the approved or disapproved status of the secondary trainer will be provided by the training facilities section in the secondary regional office to its counterpart in the regional office having jurisdiction of the principal trainer.

(b) When it is determined that the institution which is to provide the related instruction is approved as a trainer, the training facilities section will notify the registration and research section of this fact. The registration and research section thereupon will issue the necessary authorizing letters in accordance with the regulations in this part. VA Form Letter 7–15, which authorizes enrollment of the veteran in related instruction, will be amended to include the following phrase: "Vouchers, reports of progress, and all correspondence will be forwarded directly to the above regional office of the Veterans' Administration."

(c) The regional office having jurisdiction over the area in which the principal trainer is located will have responsibility for the training of the veteran and for the payment, if any, for the related instruction. Where payment is to be made, this regional office will secure a photostatic or certified copy of the contract with the institution or a copy of its catalog that shows the rates which the Veterans' Administration will be required to pay. The regional office having jurisditcion over the institution which provides related instruction will be required only to perform such checking and notification as to the approved status of the secondary institution as is described above and to conduct such supervision contacts as may be requested by the regional office having jurisdiction over the principal trainer.

(d) When a veteran in training under Public Law 16, 78th Congress, is provided related training in an adjacent area of another regional office, payment for the related training will be made in accordance with the procedures prescribed in

paragraph (c) of this section, insofar as they are applicable.

TRAINING IN FEDERAL AGENCIES FOR PARTS VII AND VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12), TRAINEES

§ 21.425 *Policies and regulations.* In accordance with the Veterans' Administration Administrator's Decision 576, August 7, 1944, "Authority for Vocational Training On-the-job in Federal Agencies With and Without Compensation," authority for the vocational training of veterans under both Public Laws 16 and 346, 78th Congress, by Federal agencies is permitted.

AUTHORIZATION FOR PAYMENT OF ALLOWABLE EXPENSES OF EDUCATION AND TRAINING FOR PARTS VII AND VIII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.433 *Payment to institutions.* The manager of a Veterans' Administration regional office is authorized to pay the approved institution for each eligible veteran enrolled therein for a full-time or part-time course of education or training, the proper charge for tuition and incidental fees or other allowable expense, and for such books, supplies, and equipment issued to the trainee, as are generally required for the successful pursuit and completion of the course by other students in the institution for the period covered by the properly certified voucher or invoice, subject to the provisions of §§ 21.442 through 21.448 for part VII trainees, and §§ 21.468 through 21.476, 21.484, 21.485, 21.493 through 21.495, 21.503 through 21.520, 21.529, 21.531, 21.539, 21.540, 21.548, 21.549, and 21.557 through 21.559, for part VIII trainees.

§ 21.434 *Payment to other than institutions.* The manager is authorized to pay for certain services rendered by other than an institution for Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainees when such services are authorized as a part of the prescribed vocational rehabilitation program for such Part VII trainees. Ordinarily such services will be covered by a separate contract. (See §§ 21.457 through 21.460.)

AMOUNTS PAYABLE FOR VOCATIONAL REHABILITATION OF PART VII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12), TRAINEES

§ 21.442 *Authority.* The provisions of Public Law 16, 78th Congress, as amended, permit the payment of any expenses necessary to accomplish the vocational rehabilitation of a Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainee.

§ 21.443 *Basis of payments for residence courses*—(a) *Tuition and fees.* Contracts covering courses of vocational rehabilitation for Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees shall provide for payments based on the charges customarily made other students pursuing the same courses, except as follows:

(1) The amount to be paid for Part VII trainees shall not exceed the amount determined as fair and reasonable and payable for Part VIII, Veterans' Regulation 1 (a), as amended, trainees where such determination is required for Part VIII trainees.

(2) A contract with a nonprofit institution, which is exceeding its normal program and is required to furnish additional facilities, personnel, or supplies to provide education and training for Part VII trainees, may provide for payment of tuition on one of the following bases (see § 21.446):

(i) $15 a month, $45 a quarter, or $60 a semester.

(ii) An amount equivalent to the nonresident fee of the institution.

(iii) Estimated cost of teaching personnel and supplies for instruction determined in accordance with the provisions of § 21.531.

Payment for Part VII trainees may not exceed the amount payable for Part VIII trainees enrolled in the same course and receiving the same services.

(3) Optional fees for services not required to be paid by all students may be paid for Part VII trainees if the services covered by such fees are considered by the manager to be necessary for the vocational rehabilitation of the trainee. (Such optional fees are not authorized for Part VIII trainees.)

(4) The full cost of any special services or courses furnished at the request of the Veterans' Administration may be paid.

(b) *Books, supplies, and equipment.* (1) Books, supplies, and equipment required to be owned personally by other students pursuing the same course will be furnished trainees through arrangements with the institution or by the Veterans' Administration direct. (See §§ 21.539 and 21.540 for detail instruction.)

(2) Ten-percent compensation for handling and issuance of books, supplies, and equipment. (See §§ 21.539 and 21.540.)

CROSS REFERENCES: *Rates for flight training.* (See §§ 21.601 to 21.612.)

Rates for correspondence courses. (See §§ 21.625 to 21.628.)

§ 21.446 *Adjustment of tuition payments to nonprofit educational institutions*—(a) *Administrator's decision.* Pursuant to the provisions of Administrator's Decision 711, June 22, 1946, an institution which finds it necessary to exceed its normal budgetary program to enable it to furnish additional facilities, such as teaching personnel and instructional supplies in order to accept veterans under Public Law 16, 78th Congress, may be paid a rate of tuition that will enable the institution to furnish such facilities.

(b) *Application.* An institution desiring an adjustment of its customary tuition charges for the education or training of veterans under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), will be required to submit a letter signed by the president of the institution to the manager of the regional office of the Veterans' Administration having jurisdiction over the territory in which the institution is located requesting such an adjustment and giving the following information:

(1) Total enrollment of students receiving resident instruction for the school year 1939–40 compared with the estimated enrollment for the school year 1946–47 or the year for which the adjustment is requested.

(2) Lump-sum total instructional expenditure for the school year 1939–40 compared with the same budget for the school year for which the adjustment is requested.

(3) A statement that payment over and above customary charges is required to enable the institution to furnish the additional facilities necessary to accommodate veterans under Part VII.

(4) The date on which it is proposed to make the adjustment effective.

(c) *Additional facilities.* If the above information shows that the institution is exceeding its normal program and is being required to furnish additional facilities, personnel, or supplies which are required for veterans under Part VII, the manager of the regional office is authorized to contract for such additional facilities and, if the nonprofit institution is not willing to furnish same for the customary tuition charges, to provide for payment of tuition on one of the following bases that is acceptable to the institution:

(1) $15 a month, $45 a quarter, or $60 a semester.

(2) An amount equivalent to the nonresident fee of the institution.

(3) Estimated cost of teaching personnel and supplies for instruction determined in accordance with the provisions of § 21.531.

(d) *Increased tuition charges.* The payment of increased tuition charges to a nonprofit institution for veterans enrolled under Part VII, as herein provided, will be limited in the case of each individual veteran to the amount payable for the veterans under Public Law 346 for the same services in the same courses. This provision does not affect the authority under § 21.443 (a) (4) to pay the full cost of special services rendered by institutions for Part VII trainees at the request of the Veterans' Administration, as these are not included in such limitations.

(e) *Contracts and effective date.* Contracts under the provisions of paragraph (c) of this section may be made effective with the first term, quarter, or semester, beginning subsequent to the date a formal request for such an adjustment is received in the regional office. In consideration of the additional facilities to be furnished, an existing contract on the basis of customary charges covering terms, quarters, or semesters for which a prospective adjustment is requested may be modified by a supplemental contract, effective prospectively, to provide payment of tuition on one of the bases set forth in paragraph (c) of this section.

§ 21.447 *Limitations on payments.* The following are limitations on amount of payments to institutions or establishments:

(a) Institutions furnishing apprentice or other training on the job, including business or other establishments, and Government agencies, may not be paid tuition or incidental fees for such train-

ing. (See §§ 21.539 and 21.540 for books, supplies, and equipment.)

(b) When more than one standard charge is made for the same service, the Veterans' Administration will pay the lowest price for the entire course, semester, quarters, or term which is offered or published.

(c) When the total cost of instruction is paid from Federal funds, or when a portion of the cost is covered by grants from the Federal Government, i. e., Smith-Hughes or other laws, due consideration to such subsidy will be given in determining the charge to the Veterans' Administration.

(d) Consideration of special features in § 21.448 may result in limitations.

§ 21.448 *Special conditions.* Some special conditions under which amounts payable may have to be determined are as follows:

(a) *Payment on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of either tuition or fees, or both.* Payment on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of either tuition or fees, or both, will be made in accordance with the following:

(1) Awards which constitute a waiver of either tuition or fees, or both, will reduce to the extent of the award the amount of either tuition or fees, or both, for which the Veterans' Administration will be responsible.

(2) Awards which are not paid in cash will reduce to the extent of the award the charges for which the Veterans' Administration will be responsible, except that awards which are made specifically for the purposes of defraying the cost of room and board in dormitories will be disregarded.

(3) Awards which are paid in cash may be retained by the veteran and not be deducted from the charge for tuition and other fees ordinarily payable by the Veterans' Administration.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized, and the charges which the Veterans' Administration will pay on behalf of veterans eligible thereunder will be reduced in accordance with such waivers.

(b) *Enrollment fees.* The Veterans' Administration may pay a registration or enrollment fee which will reimburse an institution for services in connection with registering a veteran at an amount sufficient to cover the reasonable expense of registration.

(c) *Breakage fees.* See § 21.576 (d) (1) (iii).

(d) *Tutoring for Part VII, Veterans' Regulations 1 (a) as amended (38 U. S. C., ch. 12), trainees.* Payment may be made for tutoring under Part VII when it is indicated that, in order for a veteran to be successfully rehabilitated, there is need for special assistance beyond that given to other students pursuing the same or comparable courses. This policy is based on the fact that under Part VII the Veterans' Administration has a definite responsibility to restore employability lost by a handicap due to service-incurred disability.

(e) *Reader service.* (1) When reader service is prescribed for the successful pursuit of a course of vocational rehabilitation for a veteran with visual impairment, such service may be furnished in accordance with Veterans' Administration policy and procedure.

(2) The regional manager is authorized to procure needed reader service for trainees under Part VII, as amended, through the execution of written contracts on VA Form 1903, Proposal for Vocational Rehabilitation Training Under Public Law 16, 78th Congress, with schools in which such veterans are following courses of vocational training; or, if the school is unable to provide adequate service, the manager is authorized to execute such contracts with individuals who adequately meet the qualifications indicated in subparagraph (6) of this paragraph or agencies which commonly provide satisfactory reader service.

(3) Where reader service for a veteran in school training is provided by the school as mentioned in subparagraph (2) of this paragraph, provisions for this service may be included in the general contract with the school or in a supplemental contract (in accordance with the provision in § 21.577.)

(4) Trainees with visual impairment who are in training on the job will be provided with reader service only when study is required in connection with their training and when the need for such assistance is established. The regional manager is authorized to procure the needed reader service for such trainees through the execution of written contracts on VA Form 1903 with individuals who adequately meet the qualifications indicated in subparagraph (6) of this paragraph or with agencies which commonly provide satisfactory reader service.

(5) In each contract involving reader service, the rate of payment per hour and the maximum number of hours per week of necessary reader service should be stated under paragraph "Second" of VA Form 1903, with provision for reducing the number of hours when requirements may be met with a reduced amount of service. It should also be stipulated that payment will be made only for the hours of service actually rendered. The rate per hour for reader service may vary from one community to another, but the hourly rate for such service will not exceed the rate generally paid in the community for reader service for a nonveteran student with visual impairment. The number of hours of service in each case will be determined by the amount of reading necessitated by the course. For school training, the criterion of 2 hours of reading service per week for each credit hour may be utilized as a general guide in estimating the amount of reader service required.

(6) The suitability of any prospective reader with regard to personality, background of education, and experience should be scrutinized to determine that the reader is a person who has some insight into the problems of a newly blinded adult and who can provide, as an incidental part of his work, assistance to the trainee in becoming oriented to the school or training establishment. A reader for a veteran in training on the job should be an individual whose vocational interest lies in the occupational field in which the veteran is being trained. For the school trainee, a superior student taking the same courses as the veteran usually can provide excellent reader service. If such a student is not available, an upper-class student or a graduate student studying in the same major field as the veteran should be satisfactory. In order that the quality and quantity of the service may be adequate in different subjects, in some instances it may be advisable to provide more than one reader for the trainee. A member of the trainee's family should not be employed as a reader unless it is impossible to obtain satisfactory service through any other source.

(7) The functions of a reader should be more than simply to read mechanically. His services should serve a twofold purpose:

(i) To read printed material with a degree of intelligence commensurate with the importance of the subject matter.

(ii) To test the veteran's understanding of what has been read.

(f) *Hard of hearing and deafened veterans.* Where specialized education such as lip reading, speech and voice correction, training in speech and voice retention, and acoustic training is required as an integral part of the training program for a hard-of-hearing or deafened veteran, contractual arrangements may be made not only with institutions but also with individuals who are qualified in the special fields and have properly equipped facilities for training. Hard-of-hearing and deafened veterans, for whom on-the-job training is prescribed under Part VII may also be provided with specialized education. It is desirable that all services be procured from the institution in which the veteran is enrolled for education or training. However, if adequate instruction in specialized education cannot be obtained in the institution in which the veteran is enrolled, the services of another institution or of an individual teacher or teachers may be provided by separate contracts.

(g) *Payments for equivalency examinations.* An equivalency examination is one in which qualified students by previous study or experience have gained the information to be derived from the pursuit of a subject and may, by taking an examination, gain credit for an elective or required college subject or unit course without actually studying the subject at the institution. Such an equivalency examination in the required or elective subject is given to students enrolled in the institution who request college credit for these subjects; if the student successfully passes the credit examination, he is given credit for the subject toward a degree and is not required to pursue that particular subject or unit course at the institution. When a veteran is entitled to benefits under Public Law 16, the fees for an equivalency examination may be paid by the Veterans' Administration if such examination is prescribed

by the Veterans' Administration as a necessary part of the veteran's rehabilitation program.

(h) *Payments of expenses for required degree thesis.* (1) If a manager of a regional office determines that the cost of typing, printing, microfilming, or otherwise reproducing the minimum required number of copies of a required degree thesis is an essential part of the course of training required to restore employability of a Public Law 16 trainee, such expense may be authorized.

(2) Such research expense as is generally considered essential for completing a thesis may be paid when the research work is an integral part of the course leading to the granting of a degree and the appropriate official of the institution (the veteran's committee chairman, "major" professor, department head, or appropriate dean) certifies that such expense is required in order to complete the course which requires the preparation of a thesis.

(3) Arrangements should be made with institutions to provide for furnishing of the services as indicated above, or to have invoices charged to and paid by the institution so that payment may be effected in a manner similar to that followed in connection with books and supplies. The institution should furnish an estimate of the cost at the time the veteran is enrolled in the course. Such cost must be reasonable and not in excess of the cost generally required to be incurred and paid by other students for the same services or items.

(4) The contract with the institution must include provision for payment for such services and, if the original contract does not include provision for payment for such services and it is determined that such services are necessary for the rehabilitation of Part VII trainees, contracts should be supplemented to cover payment for such services.

§ 21.449 *Medical services for Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees*—(a) *Purpose.* Where satisfactory arrangements for Part VII trainees can be made with the school, contracts for education and training should also provide for the furnishing, or arrangements for furnishing, medical and hospital care for illnesses of relatively short duration. Such medical service and hospital care may be provided for by the institution through payment of a student health fee customarily charged to all students, or arrangements may be made by the institutions with doctors and hospitals in the immediate area where complete services are not available in the school-owned and operated facilities. Section 21.253 (a), relative to medical treatment of trainees receiving vocational rehabilitation, refers particularly to considerations incident to supervision by the training officer and to treatment necessary to prevent interruption of training. In cases where it is necessary to interrupt the training of the veteran for an extended period because of illness, consideration should be given to transferring him to a Veterans' Administration hospital. Managers of the regional offices should establish a procedure whereby the institutions would notify promptly the regional office having jurisdiction over Veterans' Administration activities in the area in which the institutions are located of the veteran's illness or injury in order that arrangements may be made for medical service in a Veterans' Administration field station.

(b) *Availability of medical service.* Contract officers will, in their contract negotiations with educational institutions for education and training under Part VII, determine the nature and extent of medical service which is available to students at the institutions upon payment of a health fee and additional allowable fees or other charges; and will provide in the contract for the furnishing of medical treatment and hospital care to veterans for illnesses of relatively short duration. Where an institution is in position to furnish medical service and hospital treatment upon payment of additional fees and charges which are not covered by the health fee or where the institution can arrange with a hospital which is not connected with the institution to furnish the service for its students, the contract should be supplemented to include provision for such available service. In those cases where the records of the institution do not distinguish between Public Law 16 veterans and Public Law 346 veterans, the manager should provide the institution with a list of disabled veterans who are entitled to medical service.

(c) *Determination of fee rate payable.* The Department of Medicine and Surgery, Veterans' Administration, has negotiated contracts with virtually all States to furnish outpatient treatment to veterans with service-connected disabilities and has negotiated contracts with a number of State associations to furnish hospital care. Where it is contemplated that a contract will be negotiated with an institution to include medical and hospital services for Public Law 16 veterans, the regional office will ascertain from the division of medicine and surgery whether there is a medical contract covering the area in which the institution is located. Where such a contract exists, the fees established in the Public Law 16 contract negotiated by the regional office for medical service and the charges for hospital services furnished outside of the regular services covered by the health fee will not exceed the charges negotiated by the Department of Medicine and Surgery. Customary charges will be paid to the institution for the services covered by the regular health fee. In those cases where the Department of Medicine and Surgery does not have a contract covering medical treatment and hospital care, the charges for such service will be checked with the division of medicine and surgery to determine that they are not in excess of the general rates being approved for such services by that division.

(d) *Treatment by fee physicians.* In those cases where contractual arrangements cannot be made with educational institutions but where the institution designates a physician or physicians to whom students are referred for treatment, the regional offices will arrange with the institution to have disabled veterans report to the institution's health officer for assignment to designated physicians for treatment or referred to designated hospitals for hospitalization. In such cases, the fees for medical services and charges for hospital services shall not exceed charges provided for in contracts negotiated by the division of medicine and surgery, and, where the medical division does not have a contract, the charges for medical and hospital services will not exceed the charges approved for such services by the division of medicine and surgery.

(e) *No certification from medical division required.* No certification is required from the division of medicine and surgery for medical services provided Part VII trainees under VR&E contracts or through arrangement made by VR&E with the institutions for fee physicians and hospital care, as these services are separate and distinct from any medical services to which veterans may otherwise be entitled under the jurisdiction of the division of medicine and surgery.

(f) *Voucher preparation.* The institution which provides medical services other than those covered by the health fee of the institution or by special arrangements with outside individuals or organizations will be required to submit to the regional office an itemized voucher each month showing the name and C-number of each trainee, the nature and date of services, and fees charged.

FEES AND EXPENSES PAYABLE UNDER PART VII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TO OTHER THAN THE EDUCATIONAL AND TRAINING INSTITUTION

§ 21.457 *Administrator's Decision 557.* Administrator's Decision 557, March 7, 1944, expressly authorizes payment of certain fees or expenses for Part VII Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees payable to other than educational or training institutions in which the trainee is enrolled.

(a) Fees charged by a State or political subdivision in connection with licensing a trainee to engage in a particular occupation may be authorized under the provisions of Public Law 16, 78th Congress, as reasonable incidents of the rehabilitation of the trainee necessary to make him employable in the vocation for which he is trained.

(b) The cost of transportation incident to the taking of the required examination for a license is an incident of the program to attain employability and may lawfully be paid.

(c) Other fees required by law as a condition to the practice of a profession are exactions conditioning the practice of the profession or vocation, as distinguished from preparation for or admission to practice, and are not payable by the Veterans' Administration as a part of the training expense.

(d) Fees and other charges which are not prescribed by law, but by non-government organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership in the unions, which are incident to training on the job may be paid, provided there are no fa-

cilities feasibly available whereby the necessary training can be accomplished without paying such charges as a necessary incident of the training.

(e) Union initiation fees and membership dues required to begin work following completion of training are not payable as a necessary part of preparation for employment.

§ 21.458 *Tutoring service.* In exceptional cases, payment for private tutoring for Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainees is authorized. (See § 21.448 (d).)

§ 21.459 *Reader service.* The manager is authorized to pay for the needed reader service for a Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainee with visual impairment which makes it impossible or inadvisable for the trainee to use his eyes for reading. (See § 21.448 (e).)

§ 21.460 *Specialized education for a hard-of-hearing or deafened veteran.* If instruction in specialized education cannot be obtained in the institution in which the veteran is enrolled, the services of another institution or of an individual teacher or teachers may be provided by separate contracts. (See § 21.448 (f).)

AMOUNT PAYABLE TO APPROVED NONPROFIT INSTITUTIONS FOR PART VIII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES, FOR RESIDENCE COURSES OF 30 WEEKS OR MORE, EITHER FULL TIME OR PART TIME

§ 21.468 *Definition of nonprofit institution.*

Corporations and any community chest fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. (Par. (6), sec. 101, I. R. C.)

§ 21.469 *Course of education or training of 30 weeks or more.* For purposes of payment, a course of education or training of 30 weeks or more embraces all regular and special full-time or part-time courses customarily requiring 30 or more weeks for completion, including short-unit and complete-unit courses when such are included as a part of a course of 30 or more weeks. Examples:

(a) Academic courses requiring 30 or more weeks for completion.

(b) Summer session courses conducted by the institution in addition to its ordinary school year of 30 weeks or more which are within the required and elective courses for which credit is granted toward a degree.

(c) Short, complete courses including regular courses reorganized in duration or content to meet the needs of veterans only, if included in a course of 30 or more weeks.

(d) One or two subjects (in a course of 30 or more weeks, from the regular curriculum of an institution) for a quarter, semester, or other division of the school year.

(e) Regular courses in vocational, trade, proprietary, and other schools customarily requiring 30 or more weeks for completion.

§ 21.470 *Total payments to nonprofit institutions for courses of 30 weeks or more*—(a) *Payments authorized.* Payments are authorized to approved nonprofit institutions for eligible veterans enrolled therein for courses of 30 weeks or more. Such payments, subject to the rules and regulations set forth in §§ 21.400 to 21.671 will consist of the amounts charged to the Veterans' Administration for tuition either on a customary basis or on other than a customary basis as provided herein, plus the amounts customarily required to be paid by all students for other fees and necessary expenses and for books, supplies, and equipment which are required to be owned personally by other students pursuing the same courses and which are furnished to veterans by the institution.

(b) *Limitation on total payments by the Veterans' Administration.* The maximum amount which the Veterans' Administration will pay to a nonprofit school for eligible veterans enrolled therein for courses of 30 weeks or more is determined as follows:

(1) *Customary charges for tuition, fees, books, supplies, equipment, and other necessary expenses.* Where the charges to the Veterans' Administration for eligible veterans for tuition (if any), fees, books, supplies, equipment, and other necessary expenses are those customarily required to be paid by all students pursuing the course, veterans or nonveterans, the total payment by the Veterans' Administration for an individual veteran will not be made in an amount to exceed the rate of $500 for a full-time course for an ordinary school year unless the veteran elects on VA Form 7–1950a, Application for a Course of Education or Training Where the Customary Charges Are in Excess of the Rate of $500 for an Ordinary School Year, to have his entitlement charged with one additional day for each $2.10 of the amount by which the total customary charge for tuition, fees, books, supplies, equipment, and other necessary expenses exceeds the rate of $500 for a full-time course for an ordinary school year. If the veteran does not elect to have his entitlement charged with the amount the total customary charge for tuition, books, supplies, equipment, and other necessary expenses exceeds the rate of $500 for a full-time course for an ordinary school year, then the veteran must pay such excess amount to the institution. (See § 21.505 for exceptions.)

(2) *Other than customary charges for tuition and customary charges for fees, books, supplies, equipment, and other necessary expenses.* Where the nonprofit school elects and is permitted to charge the Veterans' Administration for eligible veterans enrolled therein on the basis of other than customary tuition and the amounts customarily required to be paid by all students pursuing the same course for fees, books, supplies, equipment, and other necessary expenses, the total payment to the institution for the other than customary tuition will be limited to an amount which, together with the customary charges for fees, books, supplies, equipment, and other necessary expenses will not exceed the rate of $500 for a full-time course for an ordinary school year. An individual veteran will not be permitted nor required either to elect on VA Form 7–1950a to have his entitlement charged at an accelerated rate or to pay personally for any part of the total charge for tuition, fees, books, supplies, equipment, and other necessary expenses where such total charge would exceed the rate of $500 for a full-time course for an ordinary school year because of the payment of tuition to the institution on other than a customary basis. (See § 21.505 for exceptions.)

§ 21.471 *Tuition payments to nonprofit schools for courses of 30 weeks or more.* (a) The Veterans' Administration is authorized to pay customary charges to a school for eligible veterans enrolled therein for courses of 30 weeks or more and is further authorized, if the school has no customary tuition or if the customary tuition is found by the Administrator to be insufficient to permit the institution to furnish education and training to eligible veterans, or inadequate compensation therefor, to pay such fair and reasonable tuition as will not exceed the estimated cost of teaching personnel and supplies for instruction.

(b) Managers are authorized to pay tuition to nonprofit schools for eligible veterans enrolled therein for courses of 30 weeks or more on any one of four alternative bases as follows:

(1) *Alternative 1.* Customary charges.

(2) *Alternative 2.* As much as $15 per month, $45 per quarter, or $60 per semester in lieu of but not in addition to customary tuition: *Provided,* Such rates do not exceed the estimated cost of teaching personnel and supplies for instruction.

(3) *Alternative 3.* Nonresident tuition for all veterans in lieu of but not in addition to customary tuition: *Provided,* That the amount of the nonresident tuition does not exceed the estimated cost of teaching personnel and supplies for instruction: *And provided further,* That the charges are not in conflict with existing State laws or other legal requirements.

(4) *Alternative 4.* Tuition based on the estimated cost of teaching personnel and supplies for instruction computed in accordance with the formula set forth in § 21.531.

(c) Subject to the limitations contained in the regulations in this part, an approved nonprofit school providing education and training to eligible veterans enrolled under the provisions of Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C., ch. 12), for a course of 30 weeks or more, may be paid all required customary fees that are not designated by the institution as tuition fees, such as hospital or health, library, incidental, activity, student union, diploma, matriculation, registration, laboratory, and course fees, together with the allowable customary charges for books, supplies, equipment, and other necessary expenses, and, in addition thereto, may be paid tuition on any one of the four

alternative bases provided in §§ 21.472 to 21.475.

§ 21.472 *Alternative 1; tuition on the basis of customary charges.* Payment will be made for tuition customarily charged to other students pursuing the same or comparable courses, as set forth in the published catalogs or bulletins of the school or college (except as otherwise stated herein). In the event an institution does not publish a bulletin, a responsible official of the institution will individually certify to the manager of the regional office within whose territory the institution is located the customary tuition charges for the courses offered.

§ 21.473 *Alternative 2; $15 a month, $45 a quarter, or $60 a semester.* Institutions with no established tuition or whose established tuition is inadequate compensation for furnishing education or training to veterans, if they so desire may be paid as much as $15 a month, $45 a quarter, or $60 a semester for each eligible veteran enrolled in a full-time course under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12); *Provided,* That the proper official certifies to the manager the charges customarily made to other students pursuing the particular course. No contract is required for such payments for Part VIII veterans.

§ 21.474 *Alternative 3; tuition based on the nonresident tuition*—(a) *Institutions which have nonresident tuition.* If they so desire, institutions which have nonresident tuition may be paid for each veteran enrolled under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), such customary tuition as is applicable to all nonresident students; *Provided,* That the charges are not in conflict with existing laws or other legal requirements. Managers will obtain evidence from the institution or proper official that such charges are legal. No contract is required for such payments for Part VIII veterans.

(b) *Limitation.* Where the institution has more than one nonresident fee, the Veterans' Administration will pay only the minimum nonresident fee for the veterans who are legal residents of the State (county, municipality, if appropriate) in which the institution is located. Payments for veterans who are not legal residents may be at the nonresident rate indicated in the institution's publication.

§ 21.475 *Alternative 4; estimated cost of teaching personnel and supplies for instruction.* When charges permitted under alternatives 1, 2, and 3 (§§ 21.472 to 21.474) are claimed by an institution to be inadequate compensation for the education or training furnished, the institution may request and the manager is authorized to contract for payment on the basis of the estimated cost of teaching personnel and supplies for instruction. (See § 21.531.)

§ 21.476 *Authorization for tuition payments on the basis of §§ 21.473 or 21.474.* (a) Paragraph 5, title II, Public Law 346, as amended by Public Law 268, 79th Congress, provides that the Administrator shall pay to the educational or training institution the customary charges for instruction of veterans and provides further that any institution may apply to the Administrator for an adjustment of tuition and that the Administrator, if he finds that the customary tuition charges are insufficient to permit the institution to furnish education or training to eligible veterans or inadequate compensation therefor, may provide for the payment of such fair and reasonable compensation as will not exceed the estimated cost of teaching personnel and supplies for instruction. Prior to the enactment of Public Law 268 on December 28, 1945, the adjustment permitted under Public Law 346 was not limited to the cost of teaching personnel and supplies for instruction. Administrator's Decision 720, September 20, 1946, provides that payments in lieu of customary charges on the basis of the second and third alternatives stated above can be effective only if the Veterans' Administration determines, on proper data, that such cost does not exceed the cost of teaching personnel and supplies for instruction.

(b) It has been determined administratively from reports submitted and studies made that the payment of other than customary tuition charges to nonprofit institutions on either the basis of $15 a month, $45 a quarter, or $60 a semester, or nonresident fees as set forth in alternates 2 and 3 (§§ 21.473 and 21.474), does not exceed the estimated cost of teaching personnel and supplies for instruction prescribed in paragraph 5, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12).

(c) Authority is granted for payments of other than customary tuition charges to nonprofit educational institutions subsequent to December 28, 1945, on either of alternatives 2 or 3 set forth in §§ 21.473 and 21.474, in accordance with instructions relating to such payments.

AMOUNT PAYABLE TO AN APPROVED INSTITUTION OTHER THAN NONPROFIT FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES FOR RESIDENCE COURSE OF 30 WEEKS OR MORE, EITHER FULL TIME OF PART TIME

§ 21.484 *Definition of profit institution or other than nonprofit institution.* An institution which has not been recognized by the Bureau of Internal Revenue as a nonprofit institution is a profit or other than nonprofit institution. (See § 21.468.)

§ 21.485 *Customary charge basis; applicability and limitations (as outlined in alternative 1, § 21.472).* (a) The total charge may not exceed the rate of $500 for a full-time course for an ordinary school year of 34 weeks, unless:

(1) It is determined to be fair and reasonable under the method outlined in § 21.530.

(2) The trainee elects to have his entitlement charged with one additional day for each $2.10 of the amount the customary charge exceeds the rate of $500 for a full-time course for an ordinary school year. If the veteran does not so elect, then he must pay such excess to the institution.

(b) Charge for books, supplies, and equipment issued to the trainee by the institution is included in the total charge for determining whether the rate of $500 is exceeded.

(c) A contract will be required if the charge is in excess of the rate of $500 for a full-time course for an ordinary school year.

AMOUNT PAYABLE TO APPROVED INSTITUTIONS FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES FOR RESIDENCE COURSES OF LESS THAN 30 WEEKS' DURATION, FULL TIME OR PART TIME

§ 21.493 *Definition of a short, intensive, post-graduate or training course.* For the purposes of paragraph 3, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), a short, intensive, post-graduate or training course is defined as that course of less than 30 weeks in duration for which the customary charges are in excess of the rate of $500 for a full-time course for an ordinary school year and is further defined as:

(a) Special courses of less than 30 weeks in duration offered by universities, colleges, and other higher educational institutions outside of and in addition to the regular established curriculum which are not within the required and elective courses for which credit is granted toward a degree or regular courses reorganized in duration or content to meet the needs of veterans only for which veterans may be granted credit toward a degree.

(b) Regular courses offered by training institutions where the course of instruction is less than 30 weeks.

(c) Special courses of less than 30-weeks' duration offered by training institutions which are not offered to regularly enrolled students pursuing a normal course of more than 30 weeks. Veterans who enroll in one or two individual subjects from the regular curriculum of an institution whose school year is more than 30 weeks and who pursue such courses for only one quarter or one semester will be considered part-time students and the institution will be paid for such students under instructions covering courses of more than 30 weeks.

§ 21.494 *Basis for payment to all institutions.* There is no differentiation in basis between nonprofit and other than nonprofit institutions for courses of less than 30 weeks, except for:

(a) Difference in method of determining fair and reasonable, when such determination is necessary. (See §§ 21.530 and 21.531.)

(b) Difference in amount payable when trainee fails to complete a subject. (See § 21.592 (c) (6))

§ 21.495 *Amount payable by the Veterans' Administration for a course of less than 30 weeks.* (a) The amount payable by the Veterans' Administration for a course of less than 30 weeks will not:

(1) Exceed the customary charge.

(2) Exceed $500 total.

(b) The amount payable by the Veterans' Administration for a course of less than 30 weeks will be based on one of the following applicable conditions:

(1) Customary charge if it has been found to be fair and reasonable in accordance with the provisions of § 21.587.

(2) A fair and reasonable charge where the customary charge is determined not to be fair and reasonable.

(c) If the charges under paragraphs (b) (1) or (2) of this section exceed $500 total, the veteran must pay the excess over $500 to the institution, since the Veterans' Administration's payment is limited by law to a maximum of $500.

(d) If the charge under paragraphs (b) (1) or (2) of this section exceeds the rate of $500 (but not a total of $500), the veteran must elect to have his entitlement charged at an accelerated rate or to pay the excess to the institution.

(e) Charges for books, supplies, and equipment to be furnished to the trainee by the institution must be included in or added to the customary charge for purpose of determining whether the total customary charge exceeds the total of $500 or the rate of $500.

THE ORDINARY SCHOOL YEAR; ENROLLMENT FOR FULL-TIME OR PART-TIME COURSES

§ 21.503 *The ordinary school year.* (a) The "ordinary school year" for instruction ordinarily given on a semester or quarterly basis is defined as a period of two semesters or three quarters—not less than 30 nor more than 38 weeks in total length.

(b) The "ordinary school year" for instruction not ordinarily given on a semester or quarterly basis is defined as a period of 34 weeks.

§ 21.504 *Measurement of enrollment for full-time or part-time.* For purposes of determining the maximum allowable amount of tuition and other charges to be paid without requiring the individual veteran to exhaust his entitlement at an accelerated rate or to determine whether the total charge for part-time courses exceeds the rate of $500, full-time and part-time courses are measured in the following terms:

(a) *Measurement of full-time residence courses.* (1) In collegiate institutions which use a standard unit of credit recognized by an accrediting association, a full-time course during the regular school year will consist of 12 or more standard semester hours of credit for a semester or their equivalent in such terms as quarter hours, term hours, majors, or courses. Summer session study will be determined in accordance with the policy of each individual institution. Students are ordinarily permitted to enroll for not more than one semester hour of credit or the equivalent for each week of attendance. For graduate or advanced professional courses pursued on a full-time basis in colleges or universities, the certification of that fact by a responsible official of the institution will be accepted.

(2) In all other schools, including high schools, a full-time course of education or training will consist of 25 or more clock hours of required attendance per week.

(3) In a combination of on-the-job and school training, the portion of each kind of training will be determined in accordance with the policy herein. For full-time training, the fractional parts of the combined course must total not less than one.

(4) Decreases in amount of credit or hours of attendance during a course which result in a veteran's carrying less than the full-time program as defined herein will necessitate an adjustment which will be based on the provisions of "Measurement of Part-Time Study."

(b) *Measurement of part-time study for Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), students.* Courses which occupy the person for less time than that set forth under paragraph (a) of this section are part-time courses. The certified statement of enrollment furnished by the training institution, insofar as applicable, will be used for making the required fractional part-time determinations.

§ 21.505 *Maximum amount payable for a quarter, semester, or term without VA Form 7–1950a*—(a) *Enrollment for ordinary school year.* Where the veteran enrolls for an ordinary school year in an educational institution in which the total charges for the ordinary school year are within the rate of $500 for a full-time course for an ordinary school year, such charges will be paid by the Veterans' Administration without regard to the portion allocated to each quarter, semester, or term. Thus, payment will be made when due under Veterans' Administration regulations for a particular quarter, semester, or term within the ordinary school year even though such charges for that particular semester, quarter, or term exceed the pro rata part of the $500 for a full-time course for an ordinary school year. A VA Form 7–1950a is not required in such cases, and such payments by the Veterans' Administration will not constitute overpayment.

(b) *Enrollment for less than ordinary school year.* Where the veteran enrolls for less than an ordinary school year, the maximum amount the Veterans' Administration may pay for such period of time will be that pro rata portion of $500 that the length of the period of enrollment bears to the length of the ordinary school year of the institution involved. Payment of customary charges in excess of the amount thus determined will be made by the Veterans' Administration only if the veteran elects to exhaust his period of entitlement at an accelerated rate and executes VA Form 7–1950a accordingly. Where an institution under these circumstances is charging the Veterans' Administration other than customary tuition, the veteran will not be permitted nor required to execute a VA Form 7–1950a nor shall the institution be allowed to charge the veteran personally for any amount in excess of the rate of $500. It may be necessary in certain instances to adjust the amount of other than customary tuition that the institution would expect to receive in order to stay within the maximum amount that the Veterans' Administration may pay under the conditions set forth in this paragraph.

(c) *Application of payment policy.* Where the veteran enrolls in an institution for a course where it has been determined that the charges for the ordinary school year will not exceed the rate of $500 for a full-time course for the ordinary school year and then interrupts or discontinues his course at any time prior to the completion of the ordinary school year, the institution will be paid the amount due it under the regulations of the Veterans' Administration without regard to the fact that the amount of such payment, based on the period of the veteran's attendance in the institution, may exceed the rate of $500 for a full-time course for an ordinary school year. Such payment will be made without requirement of a VA Form 7–1950a and will not constitute an overpayment on the part of the finance officer. Examples of this are as follows:

(1) A veteran enrolls at the beginning of an ordinary school year consisting of two semesters for which the total charges are $500, payable $300 for the first semester and $200 for the second semester and discontinues or interupts at the end of the first semester. In such a case, the Veterans' Administration will pay the institution $300 for the first semester in the same manner as payment would have been made for a student attending for the full ordinary school year, and the payment of such charges will not require the execution of a VA Form 7–1950a and will not constitute an overpayment on the part of the finance officer.

(2) A veteran enrolls in a nonprofit institution which has a refund policy for veterans equivalent to that set forth in § 21.656 where the total charges for the ordinary school year of two semesters are $500, payable $300 for the first semester and $200 for the second semester. Such veteran interrupts or discontinues his course at the expiration of 5 weeks. Under the refund policy set forth in § 21.656, the institution is entitled to bill and be paid for the full semester's charges of $300 for such veteran and the full $300 will be paid by the Veterans' Administration in the same manner and at the same time that payment would have been made had the veteran continued for the full ordinary school year. Payment of the $300 will be effected without the execution of a VA Form 7–1950a, and such payment will not constitute overpayment on the part of the finance officer.

(3) A veteran enrolls for a 48-week course of instruction at a profit institution but discontinues his training after 4 weeks. The tuition charge for the 48-week course of instruction is $360 and the cost of books, supplies, and equipment actually furnished to the veteran amounts to $100. The Veterans' Administration will pay $100 for books, etc., plus 4/48 of $360 for tuition, without the execution of a VA Form 7–1950a and such action will not constitute an overpayment.

§ 21.506 *Determinations necessary in case of part-time course.* In the case of part time, it is necessary to determine whether the charge:

(a) Exceeds the rate of $500 for an ordinary school year.

(b) Is such that a contract is required under Veterans' Administration regulations.

(c) Is allowable under Veterans' Administration regulations.

(d) Requires the execution of VA Form 7–1950a by the veteran or payment of additional funds by the veteran.

§ 21.507 *Maximum charge for part-time course without VA Form 7–1950a.* In the absence of an executed VA Form 7–1950a, the maximum charge to the Veterans' Administration for a part-time course will be that proportion of the $500 allowable for an ordinary school year which the part-time training bears to full-time training.

Examples:

(a) Veteran enrolled for four semester hours of credit for one semester and does not elect to shorten his period of eligibility through the execution of VA Form 7–1950a, the charge will not exceed $83.33, derived as follows: $\frac{4}{12}$ of $\frac{1}{2}$ of $500.

(b) Veteran enrolled for nine clock hours of required attendance per week for 10 weeks in a part-time course in an institution and does not elect to shorten his period of eligibility through the execution of VA Form 7–1950a, the maximum allowable charge will be $52.94, derived as follows: $\frac{9}{25}$ of $\frac{10}{34}$ of $500.

§ 21.508 *Maximum charge with VA Form 7–1950a.* If a veteran is enrolled in a part-time course for an ordinary school year, measured as above, and elects to have his period of entitlement charged at an accelerated rate on VA Form 7–1950a, then it is only necessary to determine whether the charge for the part-time course exceeds the rate of $500 for a full-time course and that a contract is or is not required.

§ 21.509 *Maximum charge for summer session or other period not part of ordinary school year without VA Form 7–1950a.* For purposes of computing the maximum pro rata portion of $500 that can be paid as customary charges by the Veterans' Administration for a summer session, or other period outside of the ordinary school year as defined in § 21.503, without election on the part of the veteran to have the excess customary charges paid by the Veterans' Administration and his entitlement charged with such excess, the following will apply: The maximum payment will be computed as that fractional part of $500 that is derived by using as the numerator of the fraction the number of weeks of instruction in the summer session or other period of instruction and as the denominator the number of weeks of instruction in the ordinary school year as determined by the institution.

DETERMINATION OF AMOUNTS PAYABLE FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.516 *Review of charges.* (a) The training facilities section is responsible for determining whether the charges made by institutions to the Veterans' Administration for the education and training of veterans are in accord with the provisions set forth herein. (See § 51.589.)

(b) In order to determine that charges by institutions where contracts are not required are being made to the Veterans' Administration in accordance with Veterans' Administration regulations, the basis for charges to the Veterans' Administration by each approved institution in which Public Law 346, 78th Congress, veterans are enrolled and with which a contract has not been executed will be examined from time to time by personnel of the training facilities section. Such personnel will, insofar as possible, as part of their prescribed duties, visit the institutions involved to determine that charges being made for the education and training of veterans are in accordance with Veterans' Administration regulations. From time to time, training facilities section personnel will confer with finance personnel in the regional office concerning the validity of the charges being made by such institutions.

(c) Close liaison will be maintained between the personnel of the training facilities section and the training officer or officers assigned to the institution for the purpose of ascertaining that services being rendered to the trainee are those for which charges are being made.

§ 21.517 *Limitations applicable to payments to institutions for Part VIII, Veterans' regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees*—(a) *Priority of charges*—(1) *Customary charges.* When an institution is charging the Veterans' Administration customary tuition charges applicable to all students, the customary charges for tuition and incidental fees will constitute a first charge on the maximum expenditure allowable for any one person for an ordinary school year. Charges for books, tools, equipment, supplies, and other necessary expenses will be paid from any amounts remaining after the charges for tuition and incidental fees are provided for.

(2) *Other than customary tuition.* Where a nonprofit school elects and is permitted to charge the Veterans' Administration for eligible veterans enrolled therein on the basis of "other than customary" tuition, the total payment to the institution for "other than customary" tuition will be limited to an amount which, together with customary charges for fees, books, supplies, and equipment, and other necessary expenses, will not exceed the rate of $500 for a full-time course for an ordinary school year. (See § 21.470 (b) (2).) Administrator's Decisions 638 and 720 provide that the Veterans' Administration may pay by way of increased tuition or fees only so much as will not increase the maximum cost to the individual veteran and that the Veterans' Administration may not authorize an institution to charge "fair and reasonable compensation" for instruction on the basis of nonresident fees or the cost of teaching personnel and supplies in an amount which, together with other necessary allowable fees and costs, exceeds $500 for an ordinary school year. Accordingly, "other than customary" tuition may be authorized only in such amount as to permit a complete billing for the customary expense of required and allowable fees, books, supplies, and equipment, and, in view of this, it may be necessary to adjust the charges for "other than customary" tuition in order that the full amount for other allowable expenses may be paid without exceeding the $500 maximum. The priority of charges in the case of an institution receiving "other than customary" tuition is, first, the customary fees of the institution other than those labeled "tuition" by the institution; second, the charges for books, supplies, and equipment which are required to be owned personally by all students pursuing same or similar courses; and third, "other than customary" tuition. As the 10-percent compensation for furnishing books, supplies, and equipment is an administrative expense and not a charge against the period of eligibility of an individual veteran for such compensation, it will not be included in the total charges when determining that such charges exceed the rate of $500 for an ordinary school year.

(b) *Responsibility for notification by manager.* When the estimated total customary charges exceed the rate of $500 for an ordinary school year for a full-time course or a pro rata amount for a shorter or longer period or for part-time study, the maximum amount allowable will be allocated: (1) To tuition and incidental fees, and (2) to books, supplies, and equipment, and other necessary expenses. Unless the veteran has executed and filed VA Form 7–1950a, the veteran and the institution concerned will be notified by the manager in confirming the enrollment that the Veterans' Administration will be responsible only for a total expenditure not to exceed the rate of $500 for an ordinary school year for the tuition, incidental fees, books, supplies, and equipment. Arrangements for any excess amount will be made between the veteran and the institution concerned and there will be a clear understanding to that effect before the enrollment of the veteran is approved.

(c) *The following limitations will be observed in payments for Part VIII trainees, regardless of the amount payable.* (1) Institutions furnishing apprentice or other training on the job, including business or other establishments and Government agencies, may not be paid tuition or incidental fees for such training. (See §§ 21.539 and 21.540 for books, supplies, and equipment.)

(2) When more than one standard charge is made for the same service, the Veterans' Administration will pay the lowest price for the entire course, semester, quarter, or term which is offered or published.

(3) When the total cost of instruction is paid from Federal funds, the Veterans' Administration will not approve any payments for tuition. When a portion of the cost is covered by grants from the Federal Government, i. e., Smith-Hughes or other laws, due consideration to such subsidy will be given in determining the proper charge to the Veterans' Administration.

(4) Under Part VIII there is no authority to pay a State license examination fee.

(5) Under Part VIII, payments are limited to cost of tuition, supplies, and other necessary expenses required for the successful pursuit and completion of the veteran's course, none of which can be construed to include union dues (not student union).

(6) Payments for trainees who discontinued during an instructional period are specially treated in §§ 21.655 to 21.657.

(7) A general fee of the institution which includes certain travel (i. e., travel expenses in connection with field trips taken by veterans in training under Part VIII) is allowable under the conditions outlined as follows:

(i) *Field trip transportation expense covered by regular tuition or laboratory fees.* Where field trips are required of all students pursuing the course as an integral part of the instruction in that course and the transportation expense for such trips is included as a part of the regular tuition or laboratory fees required of students pursuing such course, payment of the full amount of such tuition charges and fees may be made by the Veterans' Administration for veterans enrolled under Part VIII without deduction by reason of the inclusion therein of travel costs.

(ii) *Field trip transportation expense not authorized.* The Veterans' Administration cannot pay for the transportation expense for trainees enrolled under Part VIII, whether for an occasional field trip, summer camp, or for data for research or thesis, where the charge to the student is a separate fee not included in the tuition or laboratory fee customarily paid by all students enrolled in that course. Laboratory fees specifically designed to cover only the cost of travel expense will not be paid. Such field trip expenses may be paid for Part VII trainees if the services covered by such fees are considered by the manager to be necessary for the vocational rehabilitation of the trainee.

(8) (i) When a veteran who is enrolled in and pursuing a course of education or training under Part VIII needs special tutoring not generally required for the successful pursuit and completion of the course by other students in the institution, to meet the regularly prescribed standards of the institution, such tutoring will not be provided at Government expense, inasmuch as such a cost cannot be considered as either "customarily charged" or "generally required" as set forth in paragraph 5, Part VIII. Similarly, if an institution finds that a veteran does not meet the established entrance requirements but accepts him as a student subject to his receiving special tutoring during the pursuit of his course, such tutoring will not be provided at Government expense.

(ii) Tutoring as referred to in subdivision (i) of this subparagraph does not apply to individualized or tutorial methods of instruction employed by some institutions for all students pursuing the same course, inasmuch as any required or elective unit course listed in the official publication of the institution may be taken by the veteran regardless of the method of instruction employed by the institution. Neither does it apply to those situations where the institution makes adjustments in its course to meet the needs of veterans in the form of special classes which become part of the course.

(9) The special conditions in § 21.518 may present limitations.

§ 21.518 *Special charges and conditions*—(a) *Incidental fees.* Fees incidental to tuition and required of all students taking the same or comparable courses are payable by the Veterans' Administration. Such fees include matriculation fee, registration fee, laboratory fee, library fee, health and/or infirmary fee, student body or student activity fee, if required of all students. A fee for repeating a subject of a course would be allowable if it is required of all students who repeat a course.

NOTE: Library fines, or penalty fees, are not incidental fees payable by the Veterans' Administration. Deposits, all or part of which are normally refundable, are not incidental fees and are not payable by the Veterans' Administration as such. (See paragraph (c) of this section.

(b) *Physical and entrance examination fees.* A physical examination fee or an entrance examination fee required by an educational institution as a prerequisite of enrollment in courses of education or training may be paid by Veterans' Administration in behalf of eligible veterans: *Provided, that:*

(1) Such fee is required of all enrollees, veterans, and nonveterans.

(2) The eligible veteran actually is accepted for enrollment and begins the course for which the examination was a prerequisite.

(c) *Breakage fees.* Breakage fees or other deposits commonly required by an institution as a guarantee against contingent loss and which are refundable in whole or in part should not be included as authorized charges. Instead, it should be understood and agreed that at the conclusion of the course or term the Veterans' Administration will pay, upon being vouchered, the exact amount of breakage or loss, provided such breakage or loss is a normal one and not due to vandalism or misconduct of the trainee.

(d) *Student activity fees.* (1) Under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), there is no authority to pay any fees other than those specifically required by an institution to be paid by all students pursuing the particular course. If a fee is charged for an activity identified by an institution as a part of a course or for an activity or article which, although not a part of a course, is, nevertheless, required of all students pursuing the course for which the veteran is enrolled, such fee is considered to be authorized as an expense necessary to the pursuit of the course.

(2) If an item of expense such as the charge for a student yearbook or photograph for a yearbook or other similar items not directly a part of the course is required to be paid by all students pursuing the same or similar course as that pursued by the veteran, the charge for such item is considered an authorized item of expense.

(3) If an activity carries a fee for which the student may elect to pay or refrain from the activity, the charge for such an activity may not be considered an authorized expense. Similarly if an institution does not require all students to pay fees for glee club purchase lecture course or athletic association tickets, subscribe to yearbooks, furnish pictures for yearbooks, or purchase other items, but allows students to exercise an option or election in the matter, then the fee or expense for such activity or item may not be considered an authorized expense.

(e) *Fellowships, scholarships, or similar awards as tuition or fees.* Payment in behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of either tuition or fees, or both, will be made in accordance with the following:

(1) Awards which constitute a waiver of either tuition or fees, or both, will reduce to the extent of the award the amount of either tuition or fees, or both, for which the Veterans' Administration will be responsible, except in those cases where the award is made specifically to cover tuition and fees in excess of the $500 limit for an ordinary school year or proportionate amount for a longer or shorter course or part-time study.

(2) Awards which are not paid in cash to the veteran will reduce to the extent of the award the charges for which the Veterans' Administration will be responsible, except that awards which are made specifically for the purposes of defraying the cost of room and board in dormitories will be disregarded.

(3) Awards which are paid in cash may be retained by the veteran and not be deducted from the charge for tuition and other fees ordinarily payable by the Veterans' Administration.

(4) Waivers of either tuition or fees or both, provided under law by States or other Government authority, will be utilized and the charges which the Veterans' Administration will pay on behalf of veterans eligible thereunder will be reduced in accordance with such waivers.

(f) *Payment for auditor courses and noncredit courses.* (1) This policy applies to a subject course which is referred to by various educational institutions in such terms as an "audit" course, an "auditor" course, an "auditing" course, a "hearer" course, a "noncredit" course, or a "refresher" course. The policy further applies to one or more of these subject courses whether prescribed or recommended by the educational institution as a part of an eligible veteran's course of training or whether constituting the veteran's entire course of training.

(2) Subject to the limitations of the law, measurement of the courses listed in subparagraph (1) of this paragraph for purposes of determining contract requirements will be on a semester-hour basis (or its equivalent in such terms as quarter hours, term hours, major, or courses) for courses pursued without credit, but requiring all of the work prescribed for students enrolled for credit, except for taking the credit examinations; and on the basis of one-half of the ordinarily granted semester-hour credit (or its equivalent) for courses pursued without credit and requiring only attendance and listening at class.

(3) Payments may be made for books and instructional supplies required of all students in courses listed in subparagraph (1) of this paragraph when the veteran is required to perform all of the

work which all students enrolled for credit must perform in the course with the exception of taking credit examinations. Payments may not be made for books and instructional supplies for veterans enrolled in courses listed in subparagraph (1) of this paragraph which require only attendance and listening at class.

(4) In the case of those educational institutions which have a regular auditor's fee, usually less than the customary tuition fee for credit courses, wherever applicable the Veterans' Administration will pay the auditor's fee in lieu of the regular tuition fee.

(g) *Payment of expenses for required degree theses or dissertations*—(1) *Research expense.* The cost of such research as is generally considered essential for completing a thesis may be paid when the research work is an integral part of the course leading to the granting of a degree and the appropriate official of the institution (the veteran's committee chairman, "major" professor, department head, or appropriate dean) certifies that such expense is required in order to complete the course which requires the preparation of a thesis. Research expense considered allowable, when certified as a necessary cost as set forth herein, may include such items as duplication of questionnaires, postage required to submit questionnaires to the field, reproduction of maps and charts, purchase and development of film, etc. Travel expense of the student may not be included as a part of the cost to be paid by the Veterans' Administration.

(2) *Final preparation of thesis.* In the final preparation of the required degree thesis or dissertation, only the expense of typing the minimum number of final copies required by the institution for the granting of the degree may be paid for by the Veterans' Administration. Except as stated below, the cost of binding, printing, microfilming, or otherwise reproducing copies of a thesis or dissertation is not authorized.

(3) *Payment of customary fees.* Notwithstanding the provisions of subparagraph (2) of this paragraph, where an institution has a uniform customary fee published in the appropriate catalog or bulletin of the institution which includes the cost of printing of abstracts of a thesis, binding, microfilming, or other similar charge in connection with a course involving the submission of a thesis or dissertation and such fee is required to be paid in the same amount by all students who are enrolled for that particular subject or unit course, such customary fee may be paid by the Veterans' Administration as a part of the cost of education and training for an eligible veteran.

(4) *Institutions to arrange for services.* Arrangements should be made with institutions to provide for furnishing of the services as indicated above, or to have the invoices charged to and paid by the institution, so that payment may be effected in a manner similar to that followed in connection with books and supplies. The institution should furnish an estimate of the cost at the time the veteran is enrolled in the course. Such costs must be reasonable and not in excess of the costs generally required to be incurred and paid by other students for the same services or items.

(h) *Payments for equivalency examinations.* (1) An equivalency examination is one in which qualified students by previous study or experience have gained the information to be derived from the pursuit of a subject and may, by taking an examination, gain credit for an elective or required college subject or unit course without actually studying the subject at the institution. Such an equivalency examination in the required or elective subject is given to students enrolled in the institution who request college credit for these subjects and if the student successfully passes the credit examination he is given credit for the subject toward a degree and is not required to pursue that particular subject or unit course at the institution.

(2) *Authorized payments under Public Law 346.* The Veterans' Administration will pay the customary charge made by an institution for an equivalency examination, *Provided:*

(i) That the customary charge as published in its catalog or bulletin must be paid by all students, veterans or nonveterans, who elect to take the examination for credit to be applied toward the selected course of instruction.

(ii) That the veteran is pursuing a course in the institution under Public Law 346 and is actually enrolled as a student of the institution at the time of the examination and such student has applied for the equivalency examination for the purpose of obtaining credit toward his selected course of instruction.

(3) *Payments not authorized under Public Law 346.* Conditions under which the Veterans' Administration will not pay for equivalency examinations for Public Law 346 trainees:

(i) When the equivalency examination or a similar examination is given to a veteran who is not pursuing a course of instruction as an enrolled student in an approved institution at the time of the examination.

(ii) When the fee for such examination is not customarily charged by the institution to all students, veterans or nonveterans, who are permitted to take the examination in connection with the pursuit of the selected course of instruction.

(iii) When such examinations are given to Public Law 346 trainees prior to enrollment in an approved educational institution.

§ 21.519 *Extent of payment when entitlement has expired and is extended.* (a) Paragraph 2, Part VIII, Veterans' Regulation 1 (a), as amended by section 5 (b), Public Law 268, 79th Congress (38 U. S. C. ch. 12), reads as follows:

Provided further, That wherever the period of eligibility ends during a quarter or semester and after a major part of such quarter or semester has expired, such period shall be extended to the termination of such unexpired quarter or semester.

(b) The following interpretation will guide managers in such cases:

(1) *If enrollment is for the quarter or semester in a course of 30 weeks or more.* (i) Whenever the period of eligibility ends during a quarter or semester and after a major portion of such quarter or semester has expired, such period will be extended to the termination of such unexpired quarter of semester: *Provided,* The customary charge for tuition does not exceed the rate of $500 for an ordinary school year.

(ii) In case the customary charge exceeds the rate of $500 for an ordinary school year and the veteran has executed a VA Form 7–1950a, the period of eligibility will be extended either to the end of the quarter or semester or for a period of time during which the charge to the Veterans' Administration for tuition, fees, books, supplies, equipment, and other necessary expenses equals $125, whichever is the lesser. The period the entitlement is to be extended may be determined as follows:

(*a*) Find the total charge by the institution for 1 week by dividing the total charge for the quarter or semester by the number of weeks in the quarter or semester.

(*b*) Divide $125 by the cost per week found in subdivision (*a*) of this subdivision.

(*c*) The result will be the weeks and fractions of weeks which will be the maximum period for which the period of eligibility and entitlement can be extended.

(2) *If enrollment is for a course of 30 weeks or more in an institution which does not subdivide the year.* (i) When a veteran trainee is enrolled in and attending an educational institution which does not divide its course into quarters or semesters and his period of eligibility ends after half the period or year of instruction is completed, or after 9 weeks, whichever is the lesser in time, the period of eligibility will be extended either to the end of the course or for not to exceed nine additional weeks, whichever is the lesser in time: *Provided,* The trainee is enrolled for and pursuing a course for which the customary charge does not exceed the rate of $500 for an ordinary school year.

(ii) When the institution does not divide its course into quarters or semesters and the charge for the course exceeds the rate of $500 for an ordinary school year and VA Form 7–1950a has been executed, the period of eligibility will be extended either to the end of the course or the year or for a period of time during which the charge to the Veterans' Administration for tuition, fees, books, supplies, equipment, and other necessary expenses equals $125, whichever is the lesser. The period the entitlement is to be extended may be determined as follows:

(*a*) Find the total charge by the institution for 1 week by dividing the total charge for the course or the year by the number of weeks in the course of the year.

(*b*) Divide $125 by the cost per week found in subdivision (*a*) of this subdivision.

(*c*) The result will be the weeks and fractions of weeks which will be the maximum period for which the period of

eligibility and entitlement can be extended.

(d) If, as in flight training, the cost per week cannot be found because instruction is charged by the hour, the extension of period of entitlement will be limited to that period for which the charge to the Veterans' Administration will not exceed $125.

(3) *If enrollment is for a course of less than 30 weeks.* The rules set forth in subparagraph (1) or (2) of this paragraph will apply for a veteran-trainee, except that in no case can the Veterans' Administration pay more than the total of $500 for a course of less than 30 weeks.

§ 21.520. *Payment of tuition where a veteran has insufficient entitlement to complete a major portion of a semester, quarter, or unit period of education or training under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12).* (a) *Method of computation.* The period of entitlement for a course of education or training under the provisions of Public Law 346, as amended, is measured in calendar time. Where a veteran has insufficient entitlement to complete a major portion of the semester, quarter, or other appropriate unit of time for which the veteran desires to enroll, the maximum total payments to be made on his behalf by the Veterans' Administration will be determined as follows:

(1) *Total charges less than the rate of $500 for a full-time course for an ordinary school year.* Where the total charge, including the charge for tuition, fees, books, supplies, equipment, and other necessary expenses for such unit does not exceed the rate of $500 for an ordinary school year, such total charge for the term, semester, quarter, or other unit will be reduced to a rate per week or day, whichever is applicable, and such weekly or daily rate will be multiplied by the remaining number of weeks or days of the veteran's entitlement. The resulting amount is the maximum total payment that may be made on behalf of the veteran.

Example: To determine the payment authorized for a veteran with 6 weeks of entitlement who enrolls in a semester of 16 weeks for which the charge is $160, divide the $160 by 16 weeks and multiple the $10 per week rate by the 6 weeks of remaining entitlement. The amount of $60 is the maximum total payment that may be made by the Veterans' Administration under the above circumstances.

(2) *Total charges in excess of the rate of $500 for a full-time course for an ordinary school year.* Where the total charge, including the charge for tuition, books, supplies, equipment, and other necessary expenses exceeds the rate of $500 for an ordinary school year, the veteran's remaining days of entitlement will be multiplied by $2.10. The resulting amount is the total maximum payment that the Veterans' Administration may make on behalf of such veteran.

Example: A veteran with 3 weeks of entitlement who enrolls in a course of 16 weeks for which the charge is $300 would be entitled to have paid on his behalf 21 (days) times $2.10 or $44.10.

(b) *Notification to institution and veteran.* In any case where the veteran has insufficient entitlement to complete the major part of a term, semester, quarter, or other appropriate unit of time, the veteran and the institution will be advised of the exact amount of the veteran's entitlement. The maximum amount of payment that will be made by the Veterans' Administration on behalf of such veteran will be determined as set forth in paragraph (a) (1) and (2) of this section, and arrangements for the payment of any excess costs not covered by the veteran's entitlement must be made between the individual veteran and the institution in which he is enrolled. In the procedure of settlement, it will be necessary to prorate the total of the charges. Using the example in paragraph (a) (1) of this section, where the total charges are $160, the Veterans' Administration would pay $60 which would be partly applied to tuition, partly to fees, and partly to books, supplies, and equipment. Thus the Veteran's Administration would pay 60/160ths of the cost of each of the component parts. For example, if the $160 consisted of $100 for tuition, $20 for fees, and $40 for books, etc., the Veterans' Administration would pay 60/160ths (37½%) on account of each, or $37.50 for tuition, $7.50 for fees, and $15 for books, etc. Arrangements for the $100 balance would then be a matter between the individual veteran and the institution in which he is enrolled. Up to the end of the veteran's entitlement, the arrangements for payments for tuition, fees, books, etc., would be in accordance with Veterans' Administration regulations. For the 10 weeks balance of the period of instruction, arrangements would be the same as between a nonveteran and the institution and the Veterans' Administration would not be an interested party for such a period.

METHOD OF DETERMINING FAIR AND REASONABLE COMPENSATION AND COST OF TEACHING PERSONNEL AND SUPPLIES FOR INSTRUCTION

§ 21.530 *Determination of fair and reasonable compensation.* The determination of fair and reasonable compensation by the manager, as in the case of courses of less than 30 weeks, or courses of 30 weeks or more in institutions other than nonprofit will require the submission by the educational or training institution of detailed, certified financial statements showing the most recent actual cost experience of the institution for the specific courses involved including cost data on the items of expense which will be used for the determination of fair and reasonable compensation, the basis on which teaching salaries and other expenses have been allocated to the courses involved, and the number of students enrolled and the number of clock hours or credit hours during the period covered by the cost data. In the case of new courses for which no actual cost experience is available, estimated costs may be submitted.

(a) *For nonprofit institutions when course is less than 30 weeks.* For nonprofit institutions, as defined in subparagraph (6), section 101, Internal Revenue Code (see § 21.468), fair and reasonable compensation will be based on the allowance of the following expenses within the limits designated:

(1) Actual cost of teaching and related personnel at reasonable salaries. Teaching and related personnel will include personnel essential to the teaching function such as laboratory supply room attendants and clerical personnel assisting teachers in the preparation of instructional material and records. The salaries of personnel serving both an administrative and teaching function will be prorated accordingly. The cost shown for teaching personnel will be supported by a schedule listing the name, title, annual salary rate, and will show whether employment is part- or full-time for each person included in such cost.

(2) Consumable instructional supplies.

(3) Depreciation on equipment actually used for instruction of students at Bureau of Internal Revenue rates allowed for income tax purposes.

(4) Rental at 4 percent per year of the original construction cost of building space used for instructional purposes when the property is owned by the institution or the actual rental cost when the space is rented by the institution.

(5) Cost of heat, light, power, water, janitor service, and building maintenance.

(6) Taxes and insurance.

(7) Actual administrative expenses which are considered reasonable and necessary in the operation of the school and are properly allocable to the courses under review. Such expenses may include salaries of administrative and clerical personnel representing reasonable compensation for services actually performed and the cost of such items as postage, telephone and telegraph, travel, interest, legal and accounting fees for actual services (not retainers), stationery and office supplies, and such other similar expenses as are reasonable and necessary for the operation of the school, provided that in no case will there be included in the fair and reasonable cost determination a base salary in excess of the rate of $10,000 per annum for an individual who has a proprietary or bonus interest in the institution. The administrative cost must be itemized, and the salary items must be supported by a statement showing for each person the name, title, annual salary, percentage of time devoted to administration, and the amount of salary allocated to the cost of the courses under review. All cases where requested administrative costs exceed 15 percent of suparagraphs (1), (2), (5), and (6) of this paragraph shall be forwarded to Assistant Administrator for Vocational Rehabilitation and Education, central office, for review and approval.

(8) Expenses for advertising, sales commissions, and promotional plans will not be allowed.

(b) *For institutions other than nonprofit for either courses of less than 30 weeks or courses of 30 weeks or more.* Fair and reasonable compensation for schools operated for profit will not exceed the actual or estimated costs to the institution for providing the instruction,

plus an allowance for profit as indicated below. In determining the fair and reasonable compensation all expenses, except expenses for sales commissions and promotional plans, which are reasonable and necessary for the operation of the courses involved will be included in the cost statement and such expenses will be grouped into the general categories set forth below within the limits designated.

(1) Actual cost of teaching and related personnel at reasonable salaries. Teaching and related personnel will include personnel essential to the teaching function such as laboratory supply room attendants and clerical personnel assisting teachers in the preparation of instructional material and records. The salaries of personnel serving both in administrative and teaching functions will be prorated accordingly. The cost shown for teaching personnel will be supported by a schedule listing the name, title, annual salary rate, and will show whether employment is part-time or full-time for each person included in such cost.

(2) Consumable instructional supplies.

(3) Depreciation on building and equipment actually used for instruction of students at rates allowed by the Bureau of Internal Revenue for income tax purposes.

(4) Reasonable rent.

(5) Cost of heat, light, power, water, janitor service, and building maintenance.

(6) Taxes and insurance, exclusive of income taxes.

(7) Actual administrative expenses which are considered reasonable and necessary in the operation of the school and are properly allocable to the courses under review. Such expenses may include salaries of administrative and clerical personnel representing reasonable compensation for services actually performed and the cost of such items as postage, telephone and telegraph, travel, interest, legal and accounting fees for actual service (not retainers), stationery and office supplies, and such other similar expenses as are reasonable and necessary for the operation of the school, provided that in no case will there be included in the fair and reasonable cost determination a base salary in excess of the rate of $10,000 per annum for an individual who has a proprietary or bonus interest in the institution. The administrative cost must be itemized and the salary items must be supported by a statement showing for each person the name, title, annual salary, percentage of time devoted to administration, and the amount of salary allocated to the cost of the courses under review. All cases where requested administrative costs exceed 15 percent of subparagraphs (1), (2), (5), and (6) of this paragraph shall be forwarded to the Assistant Administrator for Vocational Rehabilitation and Education, central office, for review and approval.

(8) Advertising expense calculated in accordance with the procedure set forth below and not to exceed the limitations prescribed herein.

(i) *Determination of amount allowable for advertising expense.* Well-established profit institutions may be permitted to include actual advertising expenses for the period covered by the cost data in determining fair and reasonable costs where the percentage of actual advertising expense in relation to gross income from resident instruction for the period covered by the cost data does not exceed the average percentage of gross income expended by the institution for advertising over the 5-year period immediately preceding June 22, 1944, as evidenced by a certified statement of the institution as to advertising expenses and gross income from resident instruction for the periods covered, and where the percentage of advertising expense in relation to gross revenue from tuition does not exceed the average percentage of advertising costs for other comparable well-established schools in the area. Where the institution has not been established for a period of 5 years prior to June 22, 1944, and therefore does not have a fair standard of experience with relation to advertising costs prior to the enactment of Public Law 346, the institution may be permitted to include advertising expense actually incurred during the period covered by the cost review in an amount not to exceed the average percent of gross income from resident instruction which other well-established comparable schools in the area have expended for advertising for the 5-year period immediately prior to June 22, 1944. If there are no other comparable schools in the area and if the institution does not have a 5-year experience prior to June 22, 1944, the schools may be authorized to include actual advertising costs at a rate shown by their experience but not in an amount to exceed 8 percent of the total gross income from resident instruction for the period covered by the cost review without prior approval of central office. Where there are no other comparable well-established schools in the area and the actual advertising experience of the institution exceeds 8 percent of gross income from resident instruction, more than 8 percent may not be included in the fair and reasonable cost determination unless all facts are submitted to the Assistant Administrator for Vocational Rehabilitation and Education and approval is granted for the inclusion of advertising costs in excess of 8 percent. In no event will a newly established school, without actual cost experience for advertising expense, be permitted to include in a fair and reasonable cost statement, advertising expense in excess of 8 percent of gross income from tuition for resident instruction.

(ii) *Definition.* The term "advertising expense" as used herein includes the expenses incurred in the operation of an advertising department within the contractor's organization, as well as expenses incurred in the use of advertising media, such as newspapers, magazines, radios, brochures, pamphlets, bulletins, and catalogs. Promotional activities involving gifts, scholarships, contests, prizes, and sales commissions are not permitted to be included as allowable advertising expenses.

(9) Profit not to exceed 10 percent of the amount customarily charged to nonveteran students for the course. For example, if the customary charge for the course is $200 and the amounts listed in subparagraphs (1) to (8), of this paragraph, divided by the total number of students equals $170, there will be added to the $170 a profit allowance of $20 (10 percent of $200), making a total maximum rate of $190, which can be determined to be fair and reasonable. If no nonveteran students are enrolled and there is therefore no real customary charge actually being paid by nonveteran students, the profit allowance will be determined as one-ninth (1/9th) of the total allowable costs included in subparagraphs (1) to (8) of this paragraph.

(10) Expenses for sales commissions and promotional plans will not be allowed.

(c) *When the manager has completed his analysis of the cost data.* When the manager has completed his analysis of the cost data, he will determine on the basis of the total number of all students trained and cost of the items listed herein after reflecting known changes in costs whether the customary charges of the educational or training institution are fair and reasonable. In making this determination, the manager will give consideration to the fact that it is not fair and reasonable for the Veterans' Administration to pay a charge based on the full cost of operating an educational institution under abnormal situations, such as periods when enrollments in the institution are far below the normal capacity and expectancy of the institution, or where operating costs are greatly in excess of normal operating costs for other comparable institutions in the same general locality. Contracts, when required, will be negotiated to provide payment not to exceed the amounts determined by the manager to be fair and reasonable as provided herein.

(d) *Books, supplies, and equipment.* Books, supplies, and equipment required to be owned personally by other students pursuing the same course will be furnished by the institution to veterans (see § 21.539), and the institution will be compensated therefor on the basis of customary charges in addition to "fair and reasonable compensation" as defined above.

§ 21.531 *Adjustment of tuition on the basis of the cost of teaching personnel and supplies for instruction (see § 21.475)*—(a) *Application.* (1) An institution desiring an adjustment of customary tuition charges for instruction will forward a letter to the manager of the regional office of the Veterans' Administration having jurisdiction over the territory in which the institution is located requesting such an adjustment and such letter will include:

(i) The date on which it is proposed to make the adjusted tuition fees effective.

(ii) A certification that the customary tuition charges are insufficient to permit the institution to furnish education or training to eligible veterans or are inadequate compensation therefor.

(2) The institution, in order to have its application considered, will be required to submit with the application or within 30 days of the date of the application the following supporting data:

(i) A statement of the adjustment in customary tuition charges requested.

(ii) A statement of the fees to be charged in addition to the adjusted tuition charge.

(iii) A calculation of the cost of teaching personnel and supplies for instruction.

(iv) A copy of the latest published financial report of the institution or, if such a report is not published, a certified financial statement of the institution showing the detail income and expense of the institution during the last fiscal period.

(b) *Definition of teaching personnel and supplies for instruction.* (1) The cost of teaching personnel is defined as that part of the salary of any individual on the staff of an education or training institution applicable to the time spent by the individual in actually conducting classes and laboratories. The salaries of deans, department chairman, or other faculty members whose credit hour teaching load is reduced because of administrative or other duties will be allocated to teaching costs on the basis of the ratio that the credit-hour teaching load of the individual bears to the average full-time credit hour teaching load for a faculty member of equivalent academic rank in the department in which the individual teaches. Research performed by a faculty member in addition to teaching duties for which the institution does not receive compensation or charge a part of the salary of the individual to research costs will not be used as a basis for reducing the allocation of a salary to teaching costs. Teaching personnel would not include such personnel as presidents, treasurers, registrars, alumni secretaries, deans of men and women, business officers, football coaches, clerical personnel, service personnel, instrument makers, librarians, student assistants, or others if their functions do not include the actual instruction of students in classes or laboratories. The salary of a faculty member engaged full-time in research will not be allowed as a teaching cost. The salaries of teaching personnel applicable to services rendered for medical or other care in hospitals or clinics or for the instruction of pupils in practice schools and other similar service laboratories or divisions will not be allowed as a cost of teaching personnel.

(2) Supplies for instruction are defined as those consumable supplies required for student instruction in the classroom and laboratory. Teaching supplies do not include such items of expense as labor, utilities, communications, travel expense, library books, office supplies, and equipment.

(c) *Procedure for calculating the cost of teaching personnel and supplies for instruction.* (1) For nonprofit institutions using a semester-hour, quarter-hour, or similar credit system:

(i) Payments of tuition to an institution on the basis of the estimated cost of teaching personnel and supplies for instruction will be made in terms of a rate per credit hour for instruction applicable to all regularly enrolled veterans in all colleges, divisions, and departments of an institution except professional courses of medicine, dentistry, pharmacy, veterinary medicine, and such special professional courses for which a separate rate per credit hour should be determined if the institution desires an adjustment of customary tuition charges for these courses.

(ii) The rate per credit hour for instruction will be determined on the basis of the enrollment and the cost experience for the most recent quarter or semester for which data are available. (For purposes of the calculation, the cost and enrollment figures must cover the same instructional period.) The rate will include the cost of teaching personnel determined by dividing the total of teaching salaries as defined in paragraph (b) of this section by the total credit hours for which part- and full-time students are enrolled. To the rate per credit hour of instruction so determined will be added an allowance of 15 percent to cover the cost of personnel related to the actual teaching process and supplies for instruction.

(2) For other nonprofit schools not using a credit-hour system.

(i) Payments of tuition on the basis of the estimated cost of teaching personnel and supplies may be made in terms of clock hours of instruction; per man week; per man month; per course; or other terms as may be applicable and as may be agreed upon.

(ii) The principles, definitions, and allowances for other teaching personnel and supplies set forth herein will be used to calculate a unit cost for teaching personnel and supplies for instruction.

BOOKS, SUPPLIES, AND EQUIPMENT, INCLUDING TOOLS, FOR PARTS VII OR VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.539 *Furnished by the institution*—(a) *General.* (1) It is very much desired that schools furnish supplies to enrollees because such practice facilitates service to the enrollee.

(2) "Supplies" is a general term including books, consumable supplies, and equipment (including tools) and other necessary articles certified by the institution as required of all students, whether or not trainees, taking the same or comparable course or courses.

(b) *Estimates for "supplies"*—(1) *For Part VIII, Veterans' Regulation 1 (a), as amended, (38 U. S. C., ch. 12), trainees.* After the veteran has been admitted, the institution will forward to the regional office of the Veterans' Administration the VA Form 7–1950 presented by the veteran upon entering. On this form the institution certifies the veteran's course and the estimate charge for tuition, fees, and "supplies." The importance of such total estimated is two-fold:

(i) To determine whether the total charge will exceed the rate of $500.

(ii) To serve as a guide to all concerned as to the probable charge for supplies.

(2) *For Part VII, Veterans' Regulation 1 (a), as amended, trainees.* The estimate for "supplies" ordinarily will be stipulated in the contract.

(c) *Promptness in furnishing "supplies."* Managers will arrange with institutions so that required "supplies" will be available promptly to trainees. Such items will be issued only as they are needed except that a majority of the items which will be required and useful throughout the term or semester may be issued at the beginning of such term or semester.

(d) *"Supplies" for which payment may be made and items for which payment may not be made.* (1) Payment by the Veterans' Administration for "supplies" will be limited to those customarily required to be owned personally by all students, whether or not trainees, taking the same or comparable course or courses, and in no instance will they be greater in variety, quality, or amount than required of other students.

NOTE: Required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) Where an article is available in several prices, grades, or qualities, Veterans' Administration may pay for only such quality or grade as will meet the requirements as specified in the standard list prepared by the institution. (See paragraph (g) (2) of this section.) Veterans' Administration may pay only for that grade or quality of "supplies" required of all students in standard established schools. In arriving at the judgment as to whether "supplies" should be required, consideration should be given to the best practice in established institutions in a given field of instruction in the decade previous to passage of Public Law 346, 78th Congress. In cases where the institution's book or supply store, or other stores chosen by the institution to furnish "supplies," do not have a required item and it cannot be obtained by such store on the market, the institution will then determine whether the entry with reference to the item on the standard list should be changed to accord with the grade available.

(3) Items commonly used for personal purposes such as fountain pens, brief cases, typewriters, desk sets, reading lamps, etc., are not interpreted within the definition of "supplies" and payment therefor will not be made by the Veterans' Administration except that in the case of Part VII trainees such items may be paid for when furnished on specific authorization of the Veterans' Administration.

(4) Items worn in lieu of ordinary clothes will not be classed as "supplies." Therefore, athletic or physical education clothing, laboratory coats and trousers, nurses' or technicians' uniforms, school or military uniforms, coveralls, or similar articles will not be interpreted as within the definition of "supplies" and are not paid for by Veterans' Administration. Protective items worn primarily to protect the wearer from physical harm as distinguished from protecting his undergarments may be furnished and paid

for by the Veterans' Administration when required of all students.

(5) Any expensive items susceptible of use for personal amusement or recreation will be interpreted as within the definition of "supplies" paid for by Veterans' Administration only when managers of regional offices have satisfied themselves that the veteran possesses sufficient aptitude, talent, and interest to indicate likelihood of success as a result of a chosen course. Required conditions will be considered as fulfilled when approved advisement procedures have been followed and the course (requiring such articles) prescribed on that basis, or when veterans have successfully pursued courses for such time as to establish the fact that they possess the necessary aptitude to complete the course successfully.

(6) Payments may be made for "supplies" for a trainee registered in an auditor's, or noncredit course, provided they are required of all students, and provided further the trainee is required to perform all of the work which all students enrolled for credit must perform in the course with the exception of taking credit examination. Payments may not be made for "supplies" for Part VIII trainees registered in such a course which requires only attendance and listening in the course.

(7) Because a veteran may be required to return the articles or repay a reasonable value thereof, Veterans' Administration cannot enter into any arrangement for partial payment, sharing payment with the veteran or installment payment, except in the case of Part VIII where the total cost of the course exceeds $500, the veteran may elect to pay the excess.

(8) The Veterans' Administration will not relace at Government expense articles of "supplies" which have been issued to a trainee which are subsequently lost, stolen, or misplaced, except in the case of Part VII trainees where the replacement is specifically authorized by the Veterans' Administration.

(9) The Veterans' Administration will not reimburse a trainee who pays personally for "supplies." This does not preclude the institution from reimbursing a trainee for an authorized expenditure and billing the Veterans' Administration therefor.

(10) When a particular article is required for use in more than one prescribed subject or in another quarter or semester or school year such article will not be duplicated at Veterans' Administration expense.

(11) Expenditures incurred by the institution in connection with trainees' theses may be included with the billing for "supplies." (See § 21.518 (g) for limitations.)

(e) *Charge.* The amount billed by the institution to the Veterans' Administration for "supplies" rests on the following:

(1) The institution will assure itself that the Veterans' Administration is not billed at an unreasonable price.

(2) If an institution operates a bookstore or supply store for students, regardless of whether they are trainees, the "supplies" authorized and issued to trainees through such store will be charged at no higher rate than that paid by any other student.

(3) If an institution chooses to arrange for issuance of "supplies" by stores or agencies not institutionally owned, where other students may purchase such items, and to pay the store or agency for authorized items issued to trainees, it may properly bill the Veterans' Administration for such "supplies" at such reasonable price as may be charged the institution for such items.

(4) If the bookstore or vendor provides a discount to the institution for "supplies" purchased by students or furnished to trainees, the institution will pass the discount on to the Veterans' Administration in the charges for authorized items issued.

(5) If the discount is granted to students, the charge to the Veterans' Administration for authorized items issued to the trainee will be on the basis of the net price to students.

(6) If the institution furnishes items of "supplies," specifically purchased for trainees only, i. e., not handled through a book or supply store for all students, such items will be billed at cost to the institution.

(7) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject (referred to as a rental set) on a rental basis and the ownership or permanent possession by the student of such books is not required for the satisfactory completion of the subject, trainees should be provided the rental sets on the same basis as they are rented to other students and the rental instead of purchase price charged to the Veterans' Administration.

(8) When a "used" book or piece of equipment is issued in place of a new book, the charge should be that customary for "used" and so marked on the individual bill.

(f) *Billing for "supplies."* (1) Charges for "supplies" furnished by an institution to trainees may be billed immediately after such articles are issued or may be included in the billing for tuition and incidental fees. Billing may be made on Standard Form 1034, Public Voucher for Purchases and Services other than Personal, or on the invoice of the institution or a combination of the two; i. e., SF 1034 supported by a number of invoices (normally not more than 50). Where the institution does not submit SF 1034, the original invoice will bear the following certification:

I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards and all conditions of purchase applicable to the transactions have been complied with; and that state and local sales taxes are not included in the amounts billed.

There will be shown on each voucher or invoice the following for each veteran trainee: Name and C-number, date of enrollment, amount of charge and period covered by the charge (in column "Date of Delivery or Service"). Books, supplies, equipment, etc., need not be itemized to show the individual items for which charges are made but sufficient information should be indicated so that the character of the charges may be determined. For instance, where it is the practice of an institution to submit its charges to cover both tuition and other items in one amount, it will be sufficient to state on the voucher or invoice "Tuition, books, supplies, etc.," without break-down. However, if the school's charges as reflected by contract, catalog, or otherwise are stated separately as to tution, as to fees, as to supplies, or as to equipment (including books), the voucher or invoice should show the amount applicable to each such general breakdown. The face of the voucher will show the authority for the expenditure as, for example, "Public Law 346, 78th Congress."

(2) The 10-percent charge for handling and issuance of "supplies" (see paragraph (i) of this section for limitation) may be shown as one item following the total charge for such "supplies" and need not be itemized for each veteran trainee.

(3) In addition to the certificate of the payee appearing on SF 1034, vouchers or invoices submitted by institutions for "supplies" will contain certification to the effect that "no amount received from the Government is used or will be used as a rebate, prize, or other payment in goods or money to the veteran trainee." Where "supplies" are not itemized, a statement will accompany the voucher or invoice certifying that the articles represented by the charge for each veteran were delivered to the trainee or expenditures were made in his behalf and the institution has on hand and available for inspection by the Veterans' Administration evidence of such delivery and expenditure. If found convenient, this statement may be stamped on, or otherwise added to, the face of the voucher or invoice, in which case the signature following the payee's certificate will be considered as subscription to the statement. The following is illustrative of the added certification required:

I certify that the supplies, equipment, and miscellaneous services have been delivered or furnished to the trainees and evidence of expenditure and delivery of the articles or services on account of each veteran is available for the inspection of the VA; that no amount received from the Government is used or will be used as a rebate, prize, or other payment in goods or money to the veteran trainee.

(g) *Necessary record at the institution to support the charge for "supplies."* While it is not the desire of the Veterans' Administration to require the institution to comply with any one system for authorizing, issuing, and accounting for "supplies" issued to trainees for which the institution bills the Veterans' Administration, it is required that the evidence on hand include the following:

(1) Certification by the instructor, dean, or president of the institution of the itemized list of "supplies" required of each student, veteran-trainee, or otherwise, in a given subject of the course. This file of certification may be an annex to or a part of a standard list.

(2) A standard list (by subjects) of the "supplies" required for each quarter, semester, or year (with duplicate items of nonexpendable books, supplies,

and equipment or items susceptible to duplication as between subjects, courses, quarters, semesters, or years starred or otherwise marked).

(3) A file for each individual trainee showing the items authorized for issuance to him, and evidence of such issuance consisting of his signature as indicating receipt, and the prices charged, as a supporting basis for the bill to the Veterans' Administration for "supplies." (Such file can be helpful to the institution in checking on duplicate items and ascertaining whether items actually issued were authorized in paragraphs (a) and (b) of this section.)

(h) *Responsibility of regional office.* Managers will require the training facilities section to review the supporting records of approved institutions within their region to ascertain whether the requirements of paragraph (g) of this section are being met. If deemed feasible, they may require the institutions to file a standard list with the regional office.

(i) *Compensation for handling and issuing "supplies" for Part VII and Part VIII trainees.* (1) Educational and training institutions furnishing to trainees "supplies," which are customarily required to be owned personally by other students pursuing the same or similar courses, may be compensated for such services on the basis of 10 percent of the customary charge for the "supplies" furnished except as provided in subparagraph (10) of this paragraph.

(2) The provision for a 10-percent handling charge applies when the institutions do not customarily furnish such items for all students but which either permit or require all students to purchase "supplies" from any available source of supply.

(3) The provision for a 10-percent handling charge applies also when the institution provides through the operation of an institutional supply store or bookstore for furnishing such "supplies"; or the institutions may arrange with bookstores or agencies not connected with or operated by the institution to furnish "supplies" as authorized by it. In such cases, the institution is entitled to the 10-percent handling charge, provided the billing to the Veterans' Administration for such "supplies" is done by the institution.

(4) Where it is customary in a survey subject to permit all students to obtain the aggregate of books for the subject (referred to as a rental set) on a rental basis and the ownership or permanent possession by the student of such books is not required for the satisfactory completion of the subject, trainees should be granted the rental sets on the same basis as they are rented to other students and the rental instead of purchase price charged to the Veterans' Administration. The 10-percent handling charge applies in such case. Note that this provision is limited to rental sets. (For cases where the institution provides other books by rental, see subparagraph (5) of this paragraph.)

(5) Where the institution customarily furnishes "supplies," or any of these items, for all students enrolled either on a rental charge, or fee basis and either includes the charge for such items in the tuition or collects an additional amount therefor from each student, the provision for a 10-percent handling charge does not apply.

(6) The 10-percent handling charge is not applicable to Government-owned books such as those procured from the Library of Congress since there is a separate provision for compensating the institution for the issuance and handling of these books.

(7) The 10-percent compensation paid to institutions is considered an administrative expense of the Veterans' Administration chargeable to appropriation, Salaries and Expenses, VA Program Symbol 5100, Object 070, and not a charge against the period of eligibility of an individual veteran. In those cases where a veteran elects to execute VA Form 7–1950a for the charging of his eligibility in order to have the Veterans' Administration pay the cost of a course of education in excess of the rate of $500 per year, the 10-percent compensation for handling costs paid to the institution will not be included in the cost of the course. Therefore, it will not be necessary on public vouchers for "supplies" to show the allocation of the 10-percent charge to the materials issued to each individual veteran.

(8) Where the 10-percent handling charge is applicable, it may be shown as one item following the total charges for "supplies" on Standard Form 1034 and need not be entered in the individual supporting schedules.

(9) Where contracts are required for either Part VII or Part VIII, and the institution or establishment is entitled to and requests the 10-percent compensation for furnishing "supplies" to veterans, the contract must provide for such compensation.

(10) It is considered that compensation in the amount of 10-percent of the customary charge is a reasonable reimbursement to colleges, universities, and other schools providing academic courses where there is a small percentage of expensive equipment required to be furnished to veterans. However, in the case of trade and professional schools and, in some instances, professional courses in academic schools where items of equipment costing in excess of $50 are required and issued, the maximum allowance of 10-percent compensation on the customary charge for such expensive equipment may result in compensation in excess of a reasonable allowance for the costs incurred by the institution in procuring, issuing, and billing for such equipment. In view of these facts, managers will review the handling charges being paid to institutions where expensive items of equipment are required to be issued to veteran-trainees under Public Laws 16 or 346, as amended. However, the institution should not be required to submit detailed billings on books, supplies, and equipment for the purpose of accomplishing this review. If it is considered by the manager that the allowance of 10-percent is resulting in payment by the Veterans' Administration of more than a reasonable amount of compensation for the costs incurred by the institutions, the manager may authorize the payment of such lesser sums as may be agreed upon with the institution, based on the customary charges of the items furnished, which will result in reasonable compensation to the institutions for services rendered. In those cases where the rate of compensation is agreed upon between the institution and the Veterans' Administration at a figure less than 10-percent, such adjusted rate will be for prospective application and will not be applied for services rendered prior to the date of the agreement. Where contracts are otherwise required, the agreed rate will be inserted in such contracts when they are negotiated but existing contracts need not be changed with respect to the percent compensation prior to the termination date of such contracts unless the institution will voluntarily agree to a reduction and amendment to the contract. Where contracts are not otherwise required for payments and a rate of compensation less than 10-percent is agreed upon between the institution and Veterans' Administration, the finance officer will be furnished with a written memorandum from the vocational rehabilitation and education division setting forth the agreed rate of compensation and the effective date thereof.

(j) *Procurement by institution.* Institutions will normally furnish, issue, or release the required supplies to the trainee through such channels as it designates.

(k) *Limitations on amount for on-the-job training establishments.* Establishments providing on-the-job training may furnish the required articles by purchase in accord with current Veterans' Administration regulations.

(l) *Release of "supplies" to trainees.* "Supplies" will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

(m) *"Supplies" previously issued to trainee by the institution at Veterans' Administration expense may be returned by the trainee.* (1) As a result of failure to complete or a change of course.

(2) Voluntarily because he has no further need for them.

(n) *Disposition of "supplies" which have been turned in by a trainee.* (1) Arrangements may be made with the institution to receive the items and to reissue to trainees.

(i) The manager of the regional office is:

(*a*) Authorized to enter into negotiations with any educational institution to work out a plan with the institution to meet its particular problems and complete arrangements for the reissuance to trainees of books, supplies, and equipment returned by a trainee.

(*b*) May contract to reimburse the institution for the estimated handling cost of such books, supplies, and equipment. The amount to be paid to the particular institution should be based on the estimated reasonable cost that will be incurred by the institution in rendering this service. As to books, it should be determined that there is sound justification for the authorization of any reimbursement in excess of 25 cents per vol-

ume. In no case shall more than 35 cents per volume be authorized without prior approval of the Assistant Administrator for Vocational Rehabilitation and Education. Reimbursement should not be based on the normal profit margin charged by a retail bookstore or supply source.

(ii) The agreed estimated cost of handling may be billed to the Veterans' Administration in one lump sum on a public voucher which need show only the total number of volumes issued. Such payments for handling charges would be considered an item of administrative overhead, and finance officers will charge such expenses to allotment account Symbol, Program 5100, Object 070, under appropriation Salaries and Expenses VA. This payment for the estimated cost of handling expense is in lieu of the 10-percent allowance for handling costs authorized in paragraph (i) of this section.

(2) "Supplies" which have been recovered from trainees and for which no arrangements under subparagraph (1) of this paragraph have been made should be delivered to the supply officer and appropriate procedure set up to insure that all serviceable items will be reissued to other trainees whenever like items are needed for them whenever it is administratively feasible.

§ 21.540 *Furnished by Veterans' Administration.* In the large majority of cases, the school will be able to furnish and will have ready for issuance promptly to the trainee the required "supplies" and resort to the regional office or training officers for procurement will be the rare case. The important feature in this connection is to emphasize that the estimate for "supplies," regardless of their source, must be included in the total estimated charge for the Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainee in determining whether the rate of $500 for an ordinary school year is exceeded.

AMOUNT PAYABLE FOR COOPERATIVE COURSE FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEE; AMOUNT PAYABLE FOR COURSE OF RELATED TRAINING FOR PART VIII TRAINEE

§ 21.548 *Payments for cooperative course.* (a) Payments to the institution will be only for that portion of training or instruction given by the institution. The basis for charge will be determined in the light of the applicable portion of §§ 21.468 through 21.476, 21.484, 21.485, 21.493 through 21.495, and 21.503 through 21.509.

(b) Tuition payments for the time a veteran is in full-time training on the job will be adjusted in accordance with each individual situation.

(c) For combinations of school and on-the-job training running concurrently, the time in each component type will be measured in accordance with the appropriate standard prescribed for each type of training, and the maximum amount payable for instruction will be determined on the basis that the part-time institutional training bears to full-time institutional training.

§ 21.549 *Payments for related training.* (a) Necessary care will be exercised to avoid duplication of charges for books, supplies, and equipment.

(b) Tuition charges will be determined in accord with applicable portions of §§ 21.468 through 21.476, 21.484, 21.485, 21.493 through 21.495 and 21.503 through 21.509.

(c) For combinations of school and on-the-job training running concurrently, the time in each component type will be measured in accordance with the appropriate standard prescribed for each type of training, and the maximum amount payable for instruction will be determined on the basis that the part-time institutional training bears to full-time institutional training.

(d) See § 21.421 for payment instructions where a veteran is in training under one regional office and the institution (principal trainer) requests related training in a secondary training establishment which is located in a different regional office area.

AMOUNT PAYABLE TO HOSPITALS APPROVED FOR RESIDENCY TRAINING FOR PHYSICIAN VETERANS WHO ARE PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.557 *Payments in lieu of tuition and fees.* Hospitals approved by the appropriate State agency for training in connection with residencies for qualified physician veterans enrolled under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), (or Part VII) may be paid as follows: For courses of more than 30 weeks (residency training usually covers 52 weeks) in accord with the bases set forth in §§ 21.468 through 21.476 or 21.484 and 21.485. When payment is requested on the basis of alternative 4, § 21.471, the hospital will be required to deduct the value of services rendered by the individual from the cost of teaching personnel and supplies for instruction in arriving at the compensation to be paid for training.

§ 21.558 *Furnishing of books, supplies, and equipment for veterans pursuing residency courses in hospitals.* (a) Since residency courses are entered upon only by qualified physicians and since qualified physicians in pursuit of their medical courses and/or their general practice ordinarily own the common diagnostic instruments and certain of the texts applicable to general medicine, only books and equipment which are peculiar to the specialty for which the veteran is preparing himself will ordinarily be paid for by the Veterans' Administration.

(b) For the doctor-veteran pursuing a residency course in a hospital, the Veteran's Administration may pay for, subject to the provisions governing the amount of money which may be expended for cases under Public Law 346, such books, supplies, and equipment necessary and required for training purposes as are certified by the physician or physicians responsible for giving the course as being required to be possessed personally by every physician, veteran or non-veteran, pursuing the same course, *Provided,* That:

(1) Such books, supplies, and equipment are not furnished or loaned by the institution.

(2) In no case will any book or item of equipment be paid for when such article is already in the possession of the veteran. Adequate assurance will be obtained that the veteran does not own or have available for his use any item requested.

§ 21.559 *Responsibility of hospital which offers a residency course.* It is the responsibility of every participating hospital to maintain an educational program of high quality fulfilling established and generally accepted standards for such work. There is no authority to pay a hospital in connection with enrollment of veterans in a residency program unless such hospital offers a definite educational program as distinguished from on-the-job training, involving organized teaching on rounds and in conferences as well as classroom conferences dealing with autopsy findings, medical problems in the hospital, X-ray diagnoses, laboratory studies, and other organized educational features which definitely stamp this training as education. Such a program of instruction entails expenditures by the hospital which would be unnecessary if patient care alone were involved. Presumably, the services of additional physician teachers will be required in order to provide necessary instruction.

CONTRACTS UNDER PUBLIC LAW 16, 78TH CONGRESS AS AMENDED, FOR PART VII, VETERANS REGULATION 1 (A), AS AMENDED (38 U. S. C. CH. 12), TRAINEES

§ 21.567 *Origin of authority.* The authority for contracts is contained in paragraph 2, Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12), which provides that the Administrator may by agreement or contract with public or private institutions or establishments provide for such additional training facilities as may be suitable and necessary to accomplish the purpose of Part VII. There is authority under the law to provide by contract for all training necessary for rehabilitation.

§ 21.568 *Agreement for free instruction.* Certain public schools make no charges of any kind for instruction, services, or supplies. When it is desired to enter trainees into such institutions, an agreement will be made in triplicate. The original will be retained in the training facilities section of the regional office, the first copy will be returned to the institution, and the second copy will be sent to the director, training facilities service, vocational rehabilitation and education, central office. If any charges whatsoever are to be made, such as for student body fee or for books or supplies, VA Form 1903 will be executed.

§ 21.569 *Authority to make contracts.* (a) The manager, assistant manager, and chief, vocational rehabilitation and education division, in a regional office are authorized, with the exception of correspondence courses, to enter into contracts in accordance with existing laws, regulations, and policies with public or private educational or training institutions (other than for

training on the job) in the territory of that regional office for the purpose of providing courses of education and training for veterans enrolled under the provisions of Public Law 16, 78th Congress, as amended.

(b) Where a principal institution has branches outside the territory of a regional office which are separate entities and which do not have authority to contract, the regional office having jurisdiction over the territory in which the principal institution is located will negotiate a contract for courses offered by both the principal institution and the branches and will forward properly executed copies of the contract to the regional offices in which the branches are located. In such cases, the billing will be made by the principal institution to the Veterans' Administration regional office having jurisdiction over the veteran for which the bill is submitted and for the area in which the instruction is given.

§ 21.570 *Determination when contract is required.* Contracts are required before payment of charges can be made to educational institutions for the rehabilitation of eligible veterans. The provisions of § 21.587 relative to contracts with other than nonprofit institutions are equally applicable to contracts for the rehabilitation of Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees.

§ 21.571 *When to make contracts.* (a) Contracts will be made with training facilities as the need develops for a definite course or courses. This does not mean that it is necessary to wait until a veteran is ready for induction, although there should be reasonable assurance that the contract will be utilized. Contracts may cover any number or all of the courses offered by an institution which it is expected will be utilized even though the need for such courses is not present at the time the proposal is made.

(b) In addition to the educational training, a disabled veteran is entitled to medical care for the purpose of preventing an interruption of training, and every effort should be made to keep veterans in training to the fullest extent possible. Medical and hospital care for illnesses of relatively short duration should be provided in contracts with institutions, if available. Institutions with which contracts have been made for vocational training under the provisions of Public Law 16, 78th Congress, as amended, and those institutions with which it is contemplated that contracts will be made, should be required to furnish the regional office with a statement indicating the nature and extent of medical services available through payment of the health fee and a statement of medical services available and the fees charged therefor which are not covered by the health fee. The statement of medical services available and the fees to be charged for such services not covered by the health fee should be included in, and made a part of, Public Law 16 contracts. Immediately after the contracts have been approved, the institution will be authorized to provide medical care of the nature covered by the contract, as required, to trainees. Such authorization will be sent to the institution by the manager listing the trainees by name, if already enrolled. The manager will issue similar authority for each trainee subsequently enrolled, these authorities to remain in effect as long as the trainees covered thereby are enrolled at the institutions. Each institution providing medical service under the contract other than that covered by the health fee will be required to submit an itemized voucher each month showing the name of each trainee who received medical service, the nature and date of such service, and the fees charged.

CROSS REFERENCE: *Renewal of contracts.* (See § 21.588.)

§ 21.573 *Negotiation*—(a) *Preliminary negotiations and memorandum agreements.* When it is desired to obtain training for a disabled veteran under the provisions of Public Law 16 and a contract has not been negotiated with a suitable facility, immediate action should be taken to negotiate a contract with the institution or agency found suitable by the facilities officer. So far as possible, trainees will not be entered into training until a contract is completely negotiated. However, when a trainee's interests and rights under Public Law 16, 78th Congress, will be seriously jeopardized by withholding him from training because of the absence of a contract and the contract cannot be immediately completed, he may be entered into training on the basis of a written memorandum agreement with the school pending the final approval of a contract. Immediate steps will be taken to complete the contract. In no event will a veteran be placed in training without a written agreement.

(b) *Final negotiations.* Insofar as it is possible, it is considered that the negotiation of a contract should include a visit to the institution so that the contracting officer will have first-hand knowledge of the extent and nature of facilities and services of the institution. A personal visit to the institution is particularly desirable where contracts are negotiated which involve a fair and reasonable cost determination or payment of adjusted tuition on the basis of cost of teaching personnel and supplies for instruction so that the details of the cost data and the supporting records therefor can be examined if necessary.

§ 21.574 *Form 1903.* VA Form 1903, Proposal for Vocational Rehabilitation Training Under Public Law 16, 78th Congress, revised June 1945, will be used for all contracts under Public Law 16 (except for correspondence courses) which involve any payments whatsoever to the institution.

§ 21.575 *Deviation from contract terms.* All charges and other terms shall be stated in the contract, and no deviation therefrom can be made during the period covered by the contract. It is essential that all statements shall be in concise terms, leaving no doubt as to the services to be performed and the charges therefor.

§ 21.576 *Preparation of contracts.*—(a) *Numbering of contracts.* Public Laws 16 and 346 contracts made by regional offices, with effective dates of July 1, 1948, or any time subsequent thereto, will bear the symbol "V" to designate the Veterans' Administration, followed by the identification number of the field station. In addition, a capital letter "V" will be used to designate vocational rehabilitation and education, followed by a hyphen and the serial number of the contract beginning with the number "1" and continuing in numerical sequence without limitation as to date or year. For example, contracts of the New York City Regional Office will be designated V3006V–1, V3006V–2, etc., and contracts of the Hospital and Regional Office at Togus, Maine, will be designated V4002V–1, V4002V–2, etc. A separate number series will not be assigned to Public Law 16 and Public Law 346 contracts. Memorandum agreements referred to in § 21.573 (a) will not be numbered. Contracts renewed in accordance with the provisions of § 21.588 will retain number and symbol of the original contract which is renewed. The contract will carry the notation in the upper right corner of page 1 "negotiated contract" under or in close proximity with the contract symbol number; such notation will bear the initials of the contracting officer. Only the original, first, and second copies of the contract need be initialed by the contracting officer.

(b) *Date of contract.* A contract must show on the last page of VA Form 1903, the date on which it is approved by the manager. If a preliminary memorandum agreement was made as outlined in § 21.573, the dates set out in paragraph First will be those stated in the preliminary memorandum agreement. In such a case, the original memorandum will be attached to the original copy of the contract and by reference made part of the contract, and copies will be made and attached to the copies of the contract. In no other case will the beginning date of the contract shown on page 1 of VA Form 1903 be earlier than the date of acceptance shown on page 3 thereof.

(c) *Duration of contracts.* The dates, stating the period the contract will be in force, are to be filled in, and in general the period will not be longer than 12 months. The period may be:

(1) For the Government fiscal year where practicable and satisfactory. In most cases, this will be for schools which operate continuously and do not divide the school year into fixed terms, semesters, or quarters.

(2) For the school year. The period may extend over parts of two fiscal years, if necessary, for the purpose of covering the ordinary school year at the particular institution. It is impracticable, in view of summer sessions and of accelerated programs in effect at many institutions of higher learning, to limit contracts with these institutions to the fiscal year. Therefore, contracts with institutions having a summer session which will be utilized in the vocational rehabilitation program and with those having accelerated programs will be made to include the entire school year, even though the contracts will in most instances cover a period extending into two fiscal years.

In most institutions it will probably be more satisfactory to begin the contract with the fall term and have it conclude with the close of the summer term of the next succeeding fiscal year or begin with the summer term and terminate with the close of the spring term of the next succeeding fiscal year.

(3) For such other period as may be mutually agreeable to the institution and the Veterans' Administration.

(d) *Uniformity of contracts.* With the view of attaining uniformity and adequacy of content, proposals will be prepared, insofar as circumstances permit, in accordance with the following:

(1) *Paragraph Second; instruction and charges*—(i) *Course description.* A schedule 1 will be prepared and attached to each copy of the contract and will include complete information relative to courses and charges either by description or specific reference to attached catalogs or bulletins. The course description should provide:

(*a*) Name of the course.

(*b*) The school calendar.

(*c*) Indication whether institution is operated on a credit-hour or clock-hour basis, and, in the case of schools which do not operate on a credit-hour basis, the length of school day and week.

(*d*) Time and total credits required for the completion of the course in the case of a college or university or other school which evaluates its courses on a standard credit-hour basis; or total clock hours of instruction required in business, trade, or other schools which operate on a clock-hour basis.

(*e*) Required and elective subjects and number of credit or clock hours of each subject comprising the course should be stated. In the event that the required information or part of it is included in a published catalog, bulletin, or other official document of the institution, a copy of such publication may be attached to and made a part of the contract. In such cases, the contract will indicate by a clear reference to specific pages and paragraphs the provisions of the catalog or bulletin to be included in and made a part of the contract. In no instance will a general reference such as "as per catalog attached" be included. When a catalog is not entirely correct in its current form, the institution may make necessary corrections by inserting corrected sheets and properly initialing them.

(ii) *When more than one standard charge is quoted for a service.* When an institution quotes more than one price for a service such as a monthly rate, term rate or course rate, or offers a discount for cash in advance for a month, term, course, etc., the Veterans' Administration will pay only the lowest published charge, which is generally the cash price, for the service. Payment will continue to be made in arrears.

(*a*) Where the charge as stated by the institution is a course price, regardless of the length of time it may take an individual student to complete the course, paragraph Second will include the following provisions:

(*1*) The above charge will be the maximum charge; however, in the event any individual trainee completes his course in less time than that stated in this paragraph, the charges will be prorated to cover only the period of actual attendance. If an individual trainee does not complete a course satisfactorily within the time stated, such instruction as may be necessary to enable the trainee to complete the course will be furnished at no additional cost to the Veterans' Administration.

(*2*) The charges for each year will be stated separately in contracts with institutions offering courses of more than 1 year and for which the fees and charges are not the same for each year; for example, a 4-year course in pharmacy.

(iii) *Variable fees.* When laboratory fees or subject fees are not identical for all students enrolled in the same course, reference will be made to the published list of fees and charges in this manner: "Laboratory fees and subject fees for this course will be charged in accordance with the rate published in the referenced publication, pages _____ "or" * * * as stated in the description of the subject on pages _____." Breakage fees or other deposits commonly required by an institution as a guarantee against contingent loss and which are refundable in whole or in part will not be included in proposals. Instead, a statement will be included providing that at the conclusion of the course or term the Veterans' Administration will pay, upon being vouchered, the exact amount of the breakage or loss, provided such breakage or loss is a normal one and is not due to vandalism or other misconduct of the trainee.

(iv) *Part-time study.* If any special arrangements are made concerning the use of the courses for part-time study or evening study other than as set forth in the published literature which is made part of the contract, stipulation to that effect should be typed in as part of this paragraph.

(v) *Books, supplies, and equipment.* It is of the utmost importance that institutions agree to assume responsibility for furnishing books, supplies, and equipment. As provided in paragraph Second of the contract, VA Form 1903, books, supplies, and equipment are to be furnished as required for the instruction of veterans but in no instances greater in variety, quality, quantity, or amount than are required by the institution to be provided personally by other and all students pursuing the same or similar courses. Provision for payment for such items by the Veterans' Administration will be included in paragraph Second of the contract. In general, it is desirable that there be listed in the contract or attached schedule the books, supplies, and equipment to be furnished and the charge therefor; but, if it is not practicable to do so, the use of one of the terms as follows would be satisfactory:

(*a*) At prices charged other students by the college or book store.

(*b*) At list prices charged other students less a discount of _____ percent.

(*c*) At cost to the school.

(*d*) At a rental charge of $_____ per _____.

(*e*) As listed herein (and a listing to be attached as Schedule 2 to the contract).

(vi) *Allowance of 10 percent for handling and issuance of books, supplies, and equipment.* Where an institution is entitled to the 10-percent compensation for the handling and issuance of books, supplies, and equipment, as provided in §§ 21.539 and 21.540 provision for payment of the 10-percent handling charge must be included under paragraph Second of the contract. The provision should be expressed somewhat as follows:

> It is understood and agreed that the institution in submitting vouchers for books, supplies, and equipment furnished to veterans may add to the total of each such voucher 10 percent of the total as compensation for handling and issuing of such material.

(vii) *Guaranteed payment clause.* Under no condition will the Veterans' Administration consider a contract which contains a "guaranteed payment clause." By "guaranteed payment clause" is meant any condition in the contract which provides that the Veterans' Administration will pay a specified sum of money for a specified number of students per term.

(2) *Paragraph Third; payment.* The basis on which payments are to be made must be set forth clearly and concisely. If billing for nonrefundable fees covering nonrecurring services or for books, supplies, and equipment is to be made immediately after the services are rendered on the articles issued, it should be so stated. If payment for customary tuition or other services is to be made monthly, quarterly, etc., the exact basis for such payments should be made. If payments are to be made to nonprofit institutions at the expiration of the refund period in accordance with §§ 21.655 through 21.657 it should be so stated. In the case where payments are to be made on other than the customary charge basis, it must be stated that total payments for any individual veteran under the contract will be limited to $500 for a full-time course for an ordinary school year.

(3) *Paragraph Fourth; refusal to furnish books and supplies.* When an institution will not contract to furnish the needed books and supplies, prior authority to delete paragraph Fourth will be obtained from central office and the manager will thereafter arrange to furnish the necessary articles in accordance with established procedures.

(4) *Paragraph Fifth; charges differing from customary charges.* Where contracts are negotiated on the basis of other than customary charges, as provided under Veterans' Administration regulations, paragraph Fifth will be deleted.

(i) *Late registration.* In case of late registration which occurs on or before the last date on which the institution will accept students generally for full credit for the semester, quarter, or term, payment may be made for the entire semester. In case of registration after the last date upon which the institution will accept students for full credit for the term, charges for tuition will be prorated on the basis of the time remaining in the term or on the basis of the credits for which the veteran is enrolled.

(ii) *Proration of charges.* There will be inserted in the blank space provided at the end of paragraph Eighth the exact provisions relating to the proration of charges in the event that veterans are withdrawn or discontinued prior to the end of the term, semester, or quarter, and such provisions for proration of charges will be determined as follows:

(a) *Nonprofit institutions.* Nonprofit educational institutions which do not have or will not accept a graduated scale of charges for purposes of determining refunds at least equivalent to that set forth in §§ 21.655 through 21.657 will be required to prorate charges on the basis of actual attendance for veterans withdrawing or discontinuing prior to the close of the period and will be paid in arrears for that prorata part of the charge for services rendered during the period covered by vouchers submitted for payment.

(b) *Other than nonprofit institutions.* In all cases where veterans are enrolled in other than nonprofit institutions, payment of tuition and fees will be made in arrears prorated on the veteran's period of attendance.

(c) *Payment for books, supplies, and equipment.* Institutions may submit bills and be paid in full for books, supplies, and equipment issued to veterans in accordance with existing regulations (see §§ 21.539 and 21.540) immediately following the issuance of such material.

(d) *Fees for noncontinuing services.* The graduated scale of charges will not apply to a fee which is for noncontinuing service and not subject to refund under any conditions, such as a registration fee.

(5) *Corporate certification.* Information relative to the proper authorities for signing contracts will be inserted in the certificate form for corporations. If the institution is not a corporation, the words "not a corporation" must be typed under the word "certificate."

§ 21.577 *Supplemental contracts.* Courses or services and charges therefor not included in the original contract may be provided for by the negotiation of a supplemental contract. Each supplement will be prepared in typewritten form with six copies and distribution made in the same manner as the original contract. The supplement is in letter form, and the name of the institution and address should be placed in the upper left corner. In the first sentence, the contract number should be stated and reference made to any previous supplements by number. If copies of institutional catalogs, bulletins, or other printed material were made a part of the original contract, copies thereof need not be attached to the supplement; however, if any new publications have been issued and are to be used in description of courses or charges, they should be attached to the supplement. Individual courses and charges may be added by typewritten description as suggested in the form. Each supplement must be executed by both parties in the same manner as in the original contract.

CONTRACTS UNDER PUBLIC LAW 346, 78TH CONGRESS, AS AMENDED, FOR PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12), TRAINEES

§ 21.585 *Authority.* Contracts for education and training of veterans under Public Law 346, 78th Congress, as amended, are authorized under chapter IV, title II, thereof.

§ 21.586 *Authority to make contracts.* The manager, assistant manager, and chief, vocational rehabilitation and education division, in a regional office, are authorized, except as to correspondence courses, to enter into contracts in accordance with existing laws, regulations, and policies, with public or private educational or training institutions (other than training on the job) in the territory of that regional office for the purpose of providing courses of education and training for veterans enrolled under the provisions of Public Law 346, 78th Congress, as amended.

§ 21.587 *Determination when contract is required.* It will be necessary for a contract to be negotiated by the Veterans' Administration before payments for tuition, fees, books, supplies, equipment, and other necessary expenses are made to the institution for the training of Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees under the following circumstances:

(a) *Nonprofit institutions*—(1) *Courses of 30 weeks or more.* (i) When the institution elects and is permitted to receive payment of other than customary tuition, on the credit hour rate (alternative 4, § 21.475).

(ii) Contracts will be made effective with the beginning of the first term, semester, or quarter subsequent to the date the institution submits a formal request for payment of adjusted tuition on the basis of alternative 4, § 21.475 provided such request is approved by the Veterans' Administration.

(2) *Courses of less than 30 weeks (see § 21.493 through § 21.495).* A contract must be negotiated with a nonprofit institution in all cases where the customary charges exceed the rate of $500 for a full-time course for an ordinary school year. Where the customary charges for such courses have not been increased subsequent to June 22, 1944, in what appears to be an unreasonable amount for the services rendered, the manager may contract to pay such customary charges without the submission of cost data. In all other cases contract rates must not exceed the rates determined to be fair and reasonable in accordance with the provisions of § 21.530.

(b) *Other than nonprofit institutions (courses of 30 weeks or more and courses of less than 30 weeks).* (1) Contracts will be required when the customary charges exceed the rate of $500 for a full-time course for an ordinary school year. In the negotiation of such a contract, it will be necessary for the school to submit cost data. Agreed contract rates will not exceed rates determined by the Veterans' Administration to be fair and reasonable in accordance with the provisions of § 21.530.

(2) Effective July 1, 1948, contracts will be required when the customary charges do not exceed the rate of $500 for a full-time course for an ordinary school year where a majority of the enrollment of the institution consists of veterans in training under Public Laws 16 and 346, as amended, and where one of the following conditions prevails:

(i) The institution has been established subsequent to June 22, 1944.

(ii) The institution, although established prior to June 22, 1944, has increased its charges to all students subsequent to that date to an amount which, in the judgment of the manager, appears to be an unreasonable amount for the services rendered. In general, an increase of less than 25 percent will not be considered unreasonable. However, if, in the judgment of the manager, an increase of less than 25 percent in the case of any institution is considered to be unreasonable, the manager may submit a full report of the facts to the assistant administrator for vocational rehabilitation and education through the appropriate branch office and request a ruling as to whether or not a cost determination should be made.

(3) In the negotiation of contracts as required in subparagraphs (2) (i) and (ii) of this paragraph, it will be necessary for the school to submit cost data. Agreed contract rates will not exceed rates determined by the Veterans' Administration to be fair and reasonable in accordance with the provisions of § 21.530.

(4) Contracts will not be required when the customary charges do not exceed the rate of $500 for a full-time course for an ordinary school year provided any one of the following conditions prevails:

(i) When the customary charges of an institution established prior to June 22, 1944, do not exceed the rate of $500 for a full-time course for an ordinary school year and the institution has not increased its charges subsequent to June 22, 1944, to an amount which, in the judgment of the manager, appears to be unreasonable for the services rendered.

(ii) Where the majority of the enrollment of the institution consists of students not in training under Public Laws 16 and 346, as amended.

(iii) Where an institution which was established prior to June 22, 1944, and has been in continuous operation since that date and has not increased its charges to students, veterans, and nonveterans alike, to an amount in excess of the charges customarily made by the institution for the same or similar courses prior to June 22, 1944.

(5) Payments of customary charges will be made to institutions within the provisions of subparagraphs (4) (i), (ii), or (iii) of this paragraph without requirement of either a cost determination or a contract. In all such cases, the training facilities section will notify the finance office in writing of the customary charges that are authorized to be paid without a contract.

(6) Each institution affected will be notified in writing of these provisions not less than 30 days prior to the date a contract is required. In any case in which

a contract is required under Veterans' Administration regulations for the education and training of veterans, no payments whatsoever will be made to an institution until a written agreement or contract between the Veterans' Administration and the institution has been completed.

(7) An institution may request cancellation of its contract and negotiation of a contract for the fiscal year beginning July 1, 1948, under the provisions of this regulation, effective on same date provided all of the following conditions exist:

(i) The contract was negotiated under authority of the Administrator's telegram of September 30, 1947, prior to July 1, 1948, but extending into the fiscal year 1949.

(ii) The request for reconsideration is made in writing to the manager of the appropriate Veterans' Administration regional office not later than July 1, 1948.

(8) If the manager determines that the institution is suffering a serious financial hardship or is handicapped in giving the type of training desired because of the rate agreed upon under the formula prescribed prior to July 1, 1948, the manager is authorized to permit termination of the contract and to negotiate a new contract on the basis of the revised formula set forth in § 21.530.

(c) For flight course contracts, see § 21.601.

(d) For correspondence course contracts, see § 21.625.

§ 21.588 *Renewal of contract.* Renewals of contracts in lieu of making new contracts may be accomplished by the completion of renewal agreement when no change is made in the existing original contractual provisions. Six copies of the renewal agreement must be prepared and signed and distribution made in the same manner as the original contract. In no event will a contract originally negotiated on the basis of fair and reasonable compensation or cost of teaching personnel and supplies for instruction be renewed until the submission of proper cost data required and unless such data justifies a continuation of the terms of the existing contract. (See § 21.529 through § 21.531.) If the examination of the cost of operations for the preceding period indicates that the basis of charges is to be changed, a new contract must be negotiated.

§ 21.589 *Negotiations*—(a) *Preliminary negotiations.* A file should be maintained showing the name of each approved institution, the basis on which the institution charges for tuition, fees, etc., and other pertinent information. In all cases in which it is ascertained that a contract will be required, the institution will be notified that payments for veterans may be made only under contracts negotiated in accordance with the provisions of applicable regulations and instructions, and negotiations will be initiated with all those institutions desiring to enroll veterans under Public Law 346. In any case in which a contract is required under Veterans' Administration regulations for the education and training of veterans under the provisions of Public Law 346, as amended, no payments whatsoever will be made to an institution until a written agreement or contract between the Veterans' Administration and the institution has been completed.

(b) *Memorandum agreements.* If a contract is required under existing regulations and it is not possible to complete a formal contract with an approved institution prior to the enrollment therein of eligible veterans, a memorandum agreement may be made pending completion of the formal contract. Rates of payment need not be stated in the memorandum agreement, though provision may be included which specifies that the rates as finally adopted will be determined in accordance with rules, regulations, and policies of the Veterans' Administration and will be effective from the beginning date of training as set forth in the memorandum agreement.

(c) *Final negotiations.* (See § 21.573 (b).)

§ 21.590 *VA Form 7–1903b, Contract for Education and Training, Public Law 346, 78th Congress, as amended.* VA Form 7–1903b will be used by regional offices for all new contracts required with educational institutions under Public Law 346 for the education and training of veterans.

§ 21.591 *Deviation from contract terms.* All services, charges, and other terms will be stated in the contract, and no deviation, change, or other alteration in the terms for services or charges will be made during the period covered by the contract except as noted below. Contracts may be supplemented to add additional courses or services and charges therefor as provided in § 21.592 (d). Erasures, interlineations, and other alterations are to be avoided; but whenever made, they must be authenticated properly by each party to the contract initialing the changes.

§ 21.592 *Preparation of contracts*—(a) *Numbering of contracts.* (See § 21.576 (a).)

(b) *Period covered by contracts.* Contracts negotiated on VA Form 7–1903b will be effective for the period beginning and ending on the dates shown under article 1 (a), VA Form 7–1903b. Contracts may be negotiated to cover the Government fiscal year, a period extending over parts of two fiscal years, if necessary, to cover an entire school year of the institution, or such other period as may be mutually agreeable to the institution and the Veterans' Administration. Generally, contracts should not cover a period of more than 12 calendar months.

(c) *Preparation of VA Form 7–1903b*—(1) *General.* The appropriate contract number will be inserted in the upper right corner of page 1 of the form in the space provided therefor. The contract will carry the notation in the upper right corner of page 1 "negotiated contract" under or in close proximity to the contract symbol and number, such notation to bear the initials of the contracting officer. Only the original and first and second copies of the contract need be initialed by the contracting officer. The formal date of the contract will be inserted in the first paragraph. This date may be prior to the beginning date of instruction of Public Law 346 veterans for which payment is to be made under the contract but may not be later than the beginning date of instruction as shown in article 1 (a). The legal name of the institution and its address should be inserted in the first paragraph. In the third paragraph, the name of the appropriate approving agency should be inserted, such as "State Department of Education of the State of _____."

(2) *Article 1, instruction*—(i) *Period covered by contract.* Under paragraph (a) of the form, the period covered by the contract is to be inserted. The beginning date of the period should be the first day on which veterans are enrolled for instruction or, if veterans have been enrolled continuously, the beginning date of the semester, quarter, or term of the institution. The ending date should be the final date of instruction but not later than June 30 of the current fiscal year, except as provided in paragraph (b) of this section.

(ii) *Article 1 (b).* A schedule 1 will be prepared and attached to each copy of the contract and will include complete information with respect to courses and charges either by description or specific reference to attached catalogs or bulletins. The course description should provide:

(*a*) Name of the course.

(*b*) The school calendar.

(*c*) Indication whether institution is operated on a credit-hour or clock-hour basis, and in case of schools which do not operate on a credit-hour basis the length of school day and week.

(*d*) Time and total credits required for the completion of the course in the case of a college or university or other school which evaluates its courses on a standard credit-hour basis, or total clock hours of instruction required in business trade, or other schools which operate on a clock-hour basis.

(*e*) Required and elective subjects and number of credit or clock hours of each subject comprising the course should be stated. In the event that the required information or part of it is included in a published catalog, bulletin, or other official document of the institution, a copy of such publication may be attached to and made a part of the contract. In such cases, the schedule 1, as mentioned in the contract, will be prepared to indicate by a clear reference to specific pages and paragraphs the provisions of the catalog or bulletin to be included in and made a part of the contract. In no instance will a general reference such as "as per catalog attached" be included on schedule 1. When a catalog is not entirely correct in its current form, the institution may make necessary corrections by inserting corrected sheets and properly initialing them. If copies of school publications are not available, complete information with respect to the description of courses, charges, and other items will be typed and included as a part of schedule 1.

(iii) *Article 1 (d), books, equipment, and supplies.* It is of utmost importance that institutions agree to assume re-

sponsibility for furnishing books, equipment, and supplies. As provided in article 1 (c), of the VA Form 7–1903b, books, supplies, and equipment are to be furnished as required for the instruction of veterans but in no instance greater in variety, quality, quantity, or amount than required by the institution to be provided personally by other and all students pursuing the same or similar courses. Provision for payment for such items by the Veterans' Administration will be included in article 1 (d) of the contract. In general, it is desirable that there be listed on an attached schedule the books, supplies, and equipment to be furnished and the charges therefor; but, if it is not practicable to do so, the use of one of the terms as follows would be satisfactory.

(*a*) At prices charged other students by the college or book store.

(*b*) At list prices charged other students, less a discount of _____ percent.

(*c*) At cost to the school.

(*d*) As listed herein (and a listing shown or attached as schedule 2 to the contract).

(*e*) At a rental charge of $_____ per _____.

(iv) *Allowance of 10 percent for handling and issuance of books, supplies, and equipment.* Where an institution is entitled to the 10-percent compensation for the handling and issuance of books, supplies, and equipment as provided in §§ 21.539 and 21.540 provision for payments of the 10-percent handling charge must be included in article 1 (d) of the contract. The provision should be expressed somewhat as follows:

It is understood and agreed that the institution in submitting vouchers for books, supplies, and equipment furnished to veterans may add to the total of each such voucher 10 percent of the total as compensation for handling and issuing of such materials.

(3) *Article 2, payment.* The terms for payment under this article must set forth clearly and concisely the basis on which payments are to be made. If billing for nonrefundable fees covering nonrecurring services or for books, supplies, and equipment is to be made immediately after the services are rendered or the articles issued, it should be so stated. If payment for customary tuition or other services is to be made monthly, quarterly, etc., the exact basis for such payments should be indicated. If payments are to be made to nonprofit institutions at the expiration of the refund period in accordance with §§ 21.655 through 21.657, it should be so stated. In the case where payments are to be made on other than the customary charge basis, it must be stated that total payments for any individual veteran under the contract will be limited to $500 for a full-time course for an ordinary school year.

(4) *Article 3, records and reports.* As agreed upon in the contract, the institution will maintain records of attendance, deportment, and progress of veterans in training and will make available such records and furnish such reports to the Veterans' Administration as may be necessary and required.

(5) *Article 4, inspection.* This provision permits the duly authorized representatives of the Veterans' Administration to visit the place of instruction for the purpose of supervising the veterans in training and for such other purposes as may be necessary and required.

(6) *Article 5, proration of charges.* There will be inserted in the blank space provided in article 5 the exact provisions relating to the proration of charges in the event that veterans are withdrawn or discontinued prior to the end of the term, semester, or quarter, and such provisions for proration of charges will be determined as follows:

(i) *Nonprofit institutions.* Nonprofit educational institutions which do not have or will not accept a graduated scale of charges for purposes of determining refunds at least equivalent to that set forth in §§ 21.655 through 21.657 will be required to prorate charges on the basis of actual attendance for veterans withdrawing or discontinuing prior to the close of the period and will be paid in arrears for that prorata part of the charge for services rendered during the period covered by vouchers submitted for payment.

(ii) *Other than nonprofit institutions.* In all cases where veterans are enrolled in other than nonprofit institutions, payment of tuition and fees will be made in arrears prorated on the veteran's period of attendance.

(iii) *Payment for books, supplies, and equipment.* Institutions may submit bills and be paid in full for books, supplies, and equipment issued to veterans in accordance with existing regulations immediately following the issuance of such material.

(iv) *Fees for noncontinuing service.* The graduated scale of charges will not apply to a fee which is for noncontinuing service and not subject to refund under any conditions, such as a registration fee.

(7) *Corporate certification.* Information relative to the proper authorities for signing contracts will be inserted in the certificate form for corporations. If the institution is not a corporation, the words "not a corporation" must be typed under the word "Certificate."

(d) *Supplements to contracts.* Courses or services and charges therefor not included in the original contract may be provided for by the negotiation of a supplemental contract. Each supplement will be prepared in typewritten form. The supplement is to be in letter form, and the name of the institution and address should be placed in the upper left corner. In the first sentence, the contract number should be stated and reference made to any previous supplements by number. If copies of institutional catalogs, bulletins, or other printed material were made a part of the original contract, copies thereof need not be attached to the supplement; however, if any new publications have been issued and are to be used in description of courses or charges, they should be attached to the supplement. Individual courses and charges may be added by typewritten description. Each supplement must be executed by both parties in the same manner as in the original contract. None of terms of original contract should be included in the supplement, which should provide only for the additional courses, services, and charges covered by the supplement.

INSTRUCTIONS RELATING TO PAYMENTS FOR FLIGHT TRAINING UNDER PART VIII, VETERANS' REGULATION 1 (A), AS AMENDED (38 U. S. C., CH. 12)

§ 21.601 *Flight training.* Under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), an eligible veteran may elect to enroll for flight training in any flying school or flight training institution which has been approved by the appropriate State agency: *Provided*, That the enrollment in such school or institution is for a definite course of flight instruction consisting of one unit flight course or a combination of unit flight courses, or parts thereof, as defined herein. For the purpose of payment for flight training under Public Law 346, as amended, unit flight courses, and parts thereof are defined as, and limited to, the following:

(a) *Unit flight courses.* A unit flight course of education or training is defined as a program or study and training which is so organized as to qualify the student upon successful completion thereof to meet the requirements of the Civil Aeronautics Administration (hereinafter referred to as "CAA" for the issuance of the appropriate CAA certificate or rating, as a private pilot certificate, commercial pilot certificate, flight instructor rating, or instrument rating. Unit flight courses to be contracted and paid for, within the limits prescribed herein, are as follows:

(1) Elementary flight or private pilot course.

(2) Advanced flight or commercial pilot course (including the flight requirements for the private pilot course).

(3) Flight instructor course.

(4) Instrument rating course.

(5) Multiengine class rating course.

(6) Airline transport pilot course. A unit course authorized to provide the advanced instrument and radio knowledge and training required for the CAA airline transport pilot rating examination. Enrollment in this course will be limited to veterans who upon successful completion of this course will meet the requirements of the CAA for the issuance of the airline transport pilot rating. The other instructional requirements for the airline transport pilot rating examination are obtainable in the other flight courses defined above.

(b) *Partial flight courses.* An eligible veteran who, prior to enrollment under Public Law 346, as amended, has completed some flight time but has insufficient flight time to qualify for the desired certificate or rating may be enrolled in any unit course for which he is eligible for a sufficient number of hours to complete the requirements for the desired certificate or rating.

(c) *Flight refresher courses.* An eligible veteran who has formerly held a certificate or rating but who has not kept the certificate or rating current may enroll in the appropriate unit course at any

stage in the course for such parts of the course as are necessary for him to qualify for the reinstatement of his certificate or rating. Refresher training will be strictly limited to parts of an established unit course or courses.

(d) *Airplane class rating courses.* An eligible veteran holding a current CAA certificate with rating as a private or commercial pilot may, if he so elects, enroll in an appropriate unit course for a sufficient number of hours to qualify him for an additional airplane class rating of single engine land, single engine sea, multiengine land, or multiengine sea. For example, a veteran holding a single engine land rating could enroll in a private pilot course conducted with a single engine sea plane for sufficient training to qualify for a single engine sea rating; *Provided,* That flight training in any of these airplane class rating courses will be limited to a maximum of 20 hours.

§ 21.602 *Enrollment.* Enrollment of a veteran in a combination of unit flight courses to be pursued simultaneously will not be confirmed. An eligible veteran, however, may enroll for such a combination course of flight instruction provided the unit courses are pursued consecutively. Enrollment of a veteran in any unit flight training course under Public Law 346 will not be confirmed unless it is clearly indicated that upon successful completion of the course the veteran will have the qualifications required by the CAA for the examination for the CAA certificate or rating for which the course is claimed to qualify the veteran. For example, a veteran holding only a private pilot certificate will not be enrolled in the instrument rating course unless he has sufficient solo hours so that at the completion of the instrument rating course he will have the minimum CAA requirements of 200 solo hours, of which not less than 20 hours were solo cross-country flying, including at least one flight to a point not less than 150 miles distant from the point of departure, with at least three full-stop landings at different points on the course.

§ 21.603 *Curriculum for flight courses.* (a) Contract proposals for flight training and ground instruction under Public Law 346, as amended, must provide for, and specify, both a minimum number of hours and a maximum number of hours of flight instruction and the number of hours of classroom ground instruction, or both, required to complete each unit flight course.

(b) Contract proposals may include unit flight courses which provide for the number of flight and ground school hours normally required for each course in the regular operation of the institution or training agency. Contract proposals will not be approved which provide special unit course requirements solely for veterans in training under Public Law 346.

(c) The course may be pursued on a definite schedule, either full time or part time, and there is no requirement of the Veterans' Administration that the course must provide a minimum of 25 clock hours' attendance each week.

§ 21.604 *Payments for flight courses.* A course of flight instruction consisting of a combination of two or more of the unit flight training courses as defined herein, if pursued consecutively, may require more than 30 weeks to complete. For such a course of flight instruction, more than $500 may be paid, provided all the following conditions are met:

(a) That the course of flight instruction for which a veteran is enrolled, consisting of one or more unit courses, is regularly scheduled, on either a part-time or full-time basis, to extend for 30 weeks or more, based on the estimated minimum time required to complete the course.

(b) That the charges are fair and reasonable (see § 21.606) and not in excess of those charged to other students for the same or similar courses.

(c) That the veteran elects to have his period of entitlement charged at an accelerated rate.

§ 21.605 *Limitations.* (a) The Veterans' Administration is not authorized to pay in excess of $500 for a course of education or training of less than 30 weeks (par. 3 (b), Part VIII, Veterans' Regulation 1 (a), as amended—38 U. S. C. ch. 12). Therefore, if an eligible veteran enrolls in a course of flight instruction, which consists of one or more unit flight courses and is regularly scheduled by the flight school or institution, to be completed in less than 30 weeks' time, the maximum amount that can be paid by the Veterans' Administration for such a course is $500.

(b) The Veterans' Administration cannot pay special fees for the CAA flight examination or for pictures for flight certificates or identification cards as an additional cost of the course. Payment for these items may be made where the cost thereof is included in the customary rates per flight hour required to be paid to the institution by all students pursuing the same course. The Veterans' Administration is authorized to pay for the flight physical examination, provided the conditions prescribed in § 21.518 are fulfilled.

§ 21.606 *Contracts required.* (a) Inasmuch as the customary charges for flight training will exceed the rate of $500 for a full-time course for an ordinary school year of 34 weeks, contracts will be required for such training in accordance with the provisions of § 21.587. No contract will be approved until the manager of the regional office has found that the rates proposed to be charged are fair and reasonable. For the purpose of negotiating contracts under Public Law 346, as amended, for flight instruction as defined herein, managers are authorized to approve proposals as fair and reasonable without requiring the submission of detailed cost figures and to approve contracts for one or all of the unit flight courses, provided all of the following conditions are met:

(1) The maximum hourly rates charged for flight instruction and classroom ground instruction in each unit course do not exceed the following:

Course and equipment	Rate per hour for—		
	Dual flight instruction	Solo flight instruction	Classroom ground instruction per student hour
Private pilot course			
Primary trainer airplanes of less than 125 horsepower	$11.50	$8.50	$0.70
Commercial pilot course			
Primary trainer airplanes of less than 125 horsepower	$11.50	$8.50	$0.70
Secondary trainer airplanes of 125 horsepower or more	18.00	15.00	.70
Flight instructor course			
Primary trainer airplanes of less than 125 horsepower	$11.50	$8.50	$0.70
Instrument rating course			
Airplanes equipped for instrument flight instruction	$20.00	----	$0.70
Link trainer	10.00	----	.70
Multi-engine class rating course			
Multi-engine airplane	45.00	$45.00	.70
Airline transport pilot course			
Airplane equipped for instrument flight instruction	20.00	20.00	.70
Link trainer	10.00	10.00	.70
Multi-engine airplane	45.00	45.00	.70

NOTE: No hourly flight rate in excess of the maximum shown above will be approved for a private pilot course even though the horsepower of the equipment proposed is in excess of that shown above.

NOTE: At least 75 percent of the total flight hours must be charged at the primary trainer hourly rates and not more than 25 percent of the total flight hours will be charged at the secondary trainer rates even though more than 25 percent of the flight instruction is given in secondary trainers.

NOTE: No rate in excess of the maximum shown above will be approved for the flight instructor course even though the horsepower of the equipment proposed is in excess of that shown above.

(2) The charges for a course are not more than those made to other students pursuing the same or comparable courses, as set forth in published catalogs or bulletins of the school or institution, except as otherwise stated herein. In the event a school or institution does not publish a bulletin, a responsible official of the school or institution will individually certify to the manager of the regional office, within whose territory the school or institution is located, the customary charges for the courses offered.

(b) If a contract proposal submitted for flight courses does not conform to the provisions listed in paragraphs (a) (1) and (2) of this section, but the manager, nevertheless, considers that the proposal should be accepted, the proposal may be submitted to the office of assistant administrator for vocational rehabilitation and education, central office, with the manager's recommenda-

tion, supported by adequate facts and accompanied by statements to substantiate the proposed charges as fair and reasonable as provided for in § 21.530. Each statement to be submitted must be certified by an official of the school or institution and must include the following:

(1) A detailed statement of total actual or estimated operating expenses and sales for one full year (12 months) of operation and must indicate thereon the period covered.

(2) A separate detailed computation of the actual or estimated cost per hour for flight instruction in each type of equipment proposed to be used in the flight instruction, showing the hours of equipment operation on which the cost is based.

(3) A separate computation of the actual or estimated cost per hour for ground instruction in each ground instruction course proposed, showing the number of student classroom hours on which the cost is based.

§ 21.607 *Preparation of contracts.* (a) Contracts will be prepared on VA Form 7–1903b and must show the unit flight courses and ground courses to be furnished. Attached to the contract must be a copy of the catalog or other printed bulletins or separate schedules showing:

(1) The detailed content for each unit flight course, showing the minimum and maximum amount of dual and supervised solo time allotted for instruction and practice in each maneuver or item of instruction included in such course and the type and horsepower of equipment to be used for each maneuver or item of dual and solo instruction.

(2) The detailed content for each unit ground instruction course showing the subjects to be taught, the number of classroom hours devoted to each subject, and the items of instruction to be covered under each subject.

(3) A schedule of flight rates on an hourly basis for each type of instruction in each type of equipment and a schedule of ground instruction rates on an hourly basis for each unit course, with a maximum total amount to be charged for each complete unit course. The maximum total amount to be charged for each unit course will be derived by multiplying the hourly rate for each item of flight and ground instruction by the respective number of maximum scheduled hours therefor and adding the product. For example, the hourly and maximum total charge for a commercial pilot course might be shown as follows:

45 hours dual in 65 hp. equipment at $9.00	$405
110 hours solo in 65 hp. equipment at $7.00	770
10 hours dual in 220 hp. equipment at $15.00	150
10 hours solo in 220 hp. equipment at $12.00	120
110 hours ground instruction at $0.70	77
Total maximum cost of commercial pilot course	1,522

(4) A statement as to the minimum and maximum amount of time in terms of weeks to complete each unit course plus a statement as to the average number of required hours of classroom ground instruction and flight instruction each week.

(b) Contracts must show under article 1 (d) the actual or estimated cost of books and supplies required for each ground instruction course.

(c) Contracts must provide in article 5 for payment only on the basis of the number of ground and flight hours actually completed.

§ 21.608 *Insurance for flight training.* Personal life and accident insurance for the veteran may be charged to the Government as a part of the fair and reasonable cost of the course if it is required of, and the cost thereof included in the charge made to, all students. Operator's public liability and property damage insurance is a proper charge to be included in determining the fair and reasonable cost.

§ 21.609 *Payment under contracts.* (a) Vouchers may be submitted at the end of each month covering the actual hours of flight and ground instruction and books and supplies furnished the eligible enrolled veterans during that month. Vouchers need show only the name and C-number of each veteran, the period covered by the voucher, and the amount due for the month for each veteran for books and supplies, ground instruction, and flight instruction. For each veteran listed on the voucher, there must be attached a certificate containing a detailed statement signed by the individual veteran showing for that period:

(1) The actual number of classroom ground hours of instruction received for each subject and the charge therefor.

(2) The actual number of flight hours of instruction, dual and solo, received and the charge therefor.

(3) The type and horsepower of equipment in which the flight instruction was received.

(4) A statement that the flight hours certified on the voucher agree with the flight hours for the period as recorded in the pilot's log book of the veteran.

(5) The books and supplies furnished for the course during the month.

(b) Monthly charges are to be made at hourly rates on the basis of flight and ground instruction hours actually given. No payment for any unit course will be made by the Veterans' Administration in excess of the total maximum cost shown in the contract for that unit course even though the contractor furnished more than the maximum number of hours shown for that unit course. It is understood that the veteran's training will be discontinued at any stage where progress in the course is not satisfactory according to the regularly prescribed standards and practices of the flying school or institution.

§ 21.610 *Subsistence payments to veterans.* (a) For courses in flight schools, the determination of the subsistence allowance to be paid will be based on the clock-hours of required attendance at the school in accordance with existing instructions, with ground instruction valued at one clock-hour attendance for each required hour of classroom ground instruction, and flight instruction valued at two clock-hours for each hour of flying time. (The counting as 2 hours of actual attendance of each 1 hour of actual flying time is based on the fact that by common requirement and experience the flight student spends at the school the additional allowed time before and after actual flying, receiving instruction, advice, etc., from the instructor or in performing duties necessary to starting actual flying or completing the lesson period after flying.)

(b) The payment of subsistence allowance will be upon the basis of the anticipated normal program of flight instruction. Weekly adjustments are not required because of extended periods of nonflight weather or compensatory periods of accelerated flying time, provided the veteran holds himself in readiness for instruction and such instruction is temporarily suspended due to nonflight weather.

§ 21.611 *Execution and revision of contracts.* Future contracts for flight instruction courses that do not follow these provisions, and instructions will not be approved.

§ 21.612 *Payment for flight training in nonprofit institutions*—(a) *Purpose.* The purpose of this paragraph is to set forth the procedures and policies applicable to payment for flight training courses pursued by eligible veterans for academic credit in colleges and universities.

(b) *Payment for voluntarily elected flight courses.* Payment for voluntarily elected flight courses at colleges and universities which are pursued concurrently with other credit courses may be made subject to the following conditions:

(1) The institution certifies to the Veterans' Administration that the course in flight training is voluntarily elected by the veteran and is a related and useful part of the educational objective of the veteran in his chosen curriculum.

(2) The charge for the veteran for the flight course is not more than the sum regularly charged nonveteran students similarly electing the same course.

(3) The veteran requests acceleration in the use of his available entitlement for the total charge for the flight training course which he has voluntarily elected by executing a VA Form 1950A authorizing an additional charge to his entitlement at the rate of 1 day for each $2.10 of the total cost of the flight course.

(c) *Payment for required flight courses.* When the flight course is not voluntarily elected by the student but is required by the institution as a partial fulfillment of the institution's standard credit-hour requirement for the student's degree objective, payment to the institution will be made as follows:

(1) If the institution has elected to charge the Veterans' Administration on the basis of customary charges (alternative 1, § 21.471) and the total charge for the flight course and the regular course exceeds the rate of $500 for an ordinary school year, the veteran either will be required to execute a VA Form 1950A and have his entitlement charged at an accelerated rate for the excess or

the veteran will be required personally to pay the amount the charge exceeds the rate of $500 for the ordinary school year. If the combined customary charge is less than $500, a VA Form 7–1950a is not required.

(2) If the nonprofit institution has elected and is permitted to charge the Veterans' Administration on the basis of other than customary tuition charges (alternative 2, 3, or 4, § 21.471), the total payment to the institution for the other than customary tuition will be limited to an amount which together with the customary charges for fees (including flight training), books, supplies, equipment, and other necessary expenses will not exceed the rate of $500 for a full-time course for an ordinary school year. (See §§ 21.470 (b) (2) and 21.517.) If the total customary charges for fees (including flight training), books, supplies, equipment, and other necessary expenses, but exclusive of tuition charges, exceed the rate of $500 for a full-time course for an ordinary school year, the veteran may elect through the execution of VA Form 7–1950a to have the amount of such excess customary charges, exclusive of tuition, paid by the Veterans' Administration and his entitlement charged for the excess or he may elect to pay the excess personally.

(d) *Payment to nonprofit institutions.* Where a veteran is enrolled in a flight training course in a nonprofit institution as a required or elective part of his regular academic course, payment to the nonprofit institution will be made at hourly rates only for the actual hours of flight and ground instruction to the veteran. (See § 21.656 (g).)

INSTRUCTIONS RELATING TO CONTRACTS AND PAYMENTS FOR INSTITUTIONAL ON-FARM TRAINING COURSES UNDER PART VIII, VETERANS REGULATION 1 (A), AS AMENDED, (38 U. S. C. CH. 12)

§ 21.613 *Payments for institutional on-farm-training*—(a) *Contract required.* Payments for institutional on-farm training provided to Part VIII veterans after September 1, 1947, will be made only in accordance with the terms of contracts negotiated between the Veterans' Administration and educational institutions which provide such instruction in accordance with the provisions of Public Law 346, 78th Congress, as amended by Public Law 377, 80th Congress.

(b) *Basis for payment.* Contracts will be prepared on VA Form 7–1903b and will provide for payment for institutional on-farm training at a fixed monthly rate per student to include the cost of instruction in the classroom, individual instruction on the farm, and supervision, which has been determined to be fair and reasonable by the regional office in accordance with the formula and criteria set forth in § 21.614.

(c) *Regulations applicable to interim payments.* In order to provide a basis for deciding any questions which may be occasioned by delay in the submission of vouchers or in their payment, the following regulation is for application:

During the period September 1, 1947 (the effective date of the first contract under Public Law 377), to the date the contract was negotiated (but not later than January 1, 1948), interim payments will be made at rates being charged by educational institutions for institutional on-farm training as of September 1, 1947: *Provided,* That if such rates are determined not to be fair and reasonable, adjustments will be made on subsequent vouchers for the difference between the amounts paid subsequent to September 1, 1947, and the amounts determined to be fair and reasonable as of that date. All vouchers submitted for services rendered subsequent to September 1, 1947, and prior to the determination of an agreed contract rate will have written or stamped clearly on the face thereof by the payee the statement, "Interim payment pending determination of fair and reasonable rate to be fixed by contract."

§ 21.614 *Determination of fair and reasonable compensation for institutional on-farm training*—(a) *Certified financial statement required.* In making the determination of fair and reasonable compensation, the regional office will require the educational institution to submit certified detailed financial statements which must include the amount of any accumulated surplus (deficit). These financial statements are exempt from a reports control symbol. This financial statement shall include the actual cost experience accumulated during the most recent contract period for the institutional on-farm courses. Such financial statements shall include:

(1) The number of students (veterans and nonveterans) enrolled in the institutional on-farm courses during the period covered by the cost data and the number of student months of instruction provided during such period. (Student months of instruction will be derived by adding the number of students enrolled at the beginning of each month for the total number of months covered by the cost data.)

(2) A statement of the total income received or due from the Veterans' Administration as payment for veterans enrolled in the institutional on-farm program during the period covered by the cost data; a separate statement of income received or due from other sources for the course, during the same period, such as tuition from nonveterans and transfers from State funds.

(3) The basis on which teaching salaries and other expenses have been allocated for the courses involved.

(4) Cost data on the following items of expense which, within the limits designated, will be used for the determination of fair and reasonable compensation.

(i) *Instructors.* Actual cost of instructors at salary rates not in excess of those paid by the institution, or by other similar institutions in that area, for teachers with comparable duties and responsibilities. The cost shown for instructors will be supported by a schedule listing the name, title, and annual salary rate and will show whether employment is full- or part-time for each person included in such cost and the proportion of time spent by each on this program. In determining fair and reasonable compensation, the ratio of full-time instructors, or equivalent thereof, charged to these courses should generally average not more than one instructor for 18 or 20 students. Classes ordinarily should not exceed 25 students. Payments for classes of less than 12 will be made only in unusual circumstances such as in sparsely populated areas or where the program is just being started or ended and full explanation for such small classes shall be made.

(ii) *Travel expenses for instructors.* Such expense will be limited to mileage for use of personal cars at a rate not to exceed the established mileage rate customarily paid by the institution or provided by State law or regulation but not more than 7 cents per mile. Mileage will be limited to travel actually required to be performed by the itinerant instructor in connection with the training program.

(iii) *Consumable classroom instructional supplies.* This item will include the cost of instructional supplies and teaching aids which are actually consumed during the process of instruction and which are required for all students.

(iv) *Textbooks.* This item will include required textbooks, farm account books, etc., where such items are customarily furnished to all students at no additional charge to the student and the cost thereof is included in the monthly tuition rate. If separate charges are customarily made by the institution to all students for text and other books, no cost will be shown for this item, but provision will be made in the contract to pay for such required text and other books at prices customarily charged to other students.

(v) *Building operation and maintenance, depreciation, and rent.* Cost of the pro rata portion of depreciation on instructional equipment, heat, light, power, water, janitor service, building maintenance, rent of nonpublicly owned facilities, and insurance for classroom and laboratory space which may be allocated to these courses on the basis of the time the classrooms are used for these courses in relation to the full-time use of such classrooms and laboratories. A sum not in excess of $1.25 per student per month is acceptable as a fair and reasonable charge for this item without detailed calculation. In any case where the institution requests an amount in excess of $1.25 per man per month for this item, the manager will submit the proposal with the cost data and his recommendations relative thereto to the Assistant Administrator for Vocational Rehabilitation and Education through the appropriate branch office for a determination as to whether an amount in excess of $1.25 per student per month may be included in the fair and reasonable determination.

(vi) *Allowance for administration and supervision.* An allowance to cover the cost of supervisory, administrative, and clerical personnel and the cost of consumable office supplies and other expenses for administrative and supervisory offices including related expenses of the State agency responsible for conducting these courses. An amount not in excess of 5 percent of the cost of subdivisions (i) through (v) of this sub-

paragraph may be included to cover these costs without detailed justification. However, if the institution requests more than a 5 percent allowance for administration and supervision, the manager is authorized to include in the fair and reasonable cost, such amount in excess of 5 percent as may be justified as reasonable and necessary to conduct a satisfactory program: *Provided*, That in no case will administrative and supervisory costs in excess of 15 percent of subdivisions (i) through (v) of this subparagraph be included in the fair and reasonable justification except on prior approval of the Assistant Administrator for Vocational Rehabilitation and Education. Any request for an amount in excess of 5 percent for administration and supervision must be supported by a detailed schedule of the cost of the items included.

(b) *Estimated cost may be used.* In the case of new courses for which no actual cost experience is available or cost data is incomplete, estimated cost may be substituted in the formula prescribed above.

§ 21.615 *Exclusion of salaries paid from Federal funds.* In computing fair and reasonable compensation, there shall be excluded from the costs all salaries paid from matching State-Federal appropriations such as the Smith-Hughes and George-Deen appropriations, and the certification of the appropriate official of the institution on the cost data must include a statement that no part of the salaries or other expenses which were or are to be paid from such funds is included.

§ 21.616 *Review and adjustment of contract rates.* Contracts for institutional on-farm training shall be executed for a period not to exceed 12 months. In negotiating new contracts or for the renewal of contracts which were in effect on or before September 1, 1947, consideration will be given to any surpluses (deficits) accumulated as a result of the payment of the agreed rates in excess (deficiency) of the amount spent on the program by the institution and the agreed rate for the succeeding contract period will be adjusted to make due allowance for accumulated surpluses (deficits).

§ 21.617 *Short-term renewal of contract.* If at the expiration of the contract period the institution is not in a position to submit substantiating cost data for an institution on-farm contract to be negotiated in accordance with Veterans' Administration regulations, the contract may be renewed for such period of time as is necessary at the same effective rate of tuition in existence. Generally, the additional time needed should not be more than 3 months though for this purpose contracts may be renewed for a maximum period of 4 months. Such an arrangement will give the institution time to prepare cost data needed for the determination of fair and reasonable rate to be paid for the next contract period. When the final rate is agreed upon for the succeeding contract period, after taking into account any surplus or deficit, the renewal agreement will be superseded by the new contract providing for the agreed rate.

§ 21.618 *Books, supplies, and equipment.* The farm on which a veteran receives that part of his course of institutional on-farm training must be equipped with the necessary supplies and equipment which will permit the trainee, even though he is in control of the farm, to pursue successfully institutional on-farm training. Therefore, under no circumstances shall the Veterans' Administration pay for any equipment or supplies which a person may require in order to operate the farm. The Veterans' Administration will pay for only those books and incidental supplies required for the veteran to pursue that part of his course in organized group instruction. Such books and supplies will be limited to those required to be owned personally by all students in such course. Farm equipment or tools will not be furnished since it is considered that these are articles which a farm must have in order to meet the provisions of Public Law 377, 80th Congress.

CORRESPONDENCE COURSES

§ 21.625 *Contract negotiations for correspondence courses*—(a) *Definition of a correspondence course.* A course of education or training by correspondence is a course conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work which involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendations as may be necessary to instruct the student, the keeping of student achievement records, and finally the issuance of a diploma, certificate, or other evidence to the student who has satisfactorily completed the requirements of the course.

(b) *Approved schools.* In accordance with paragraph 4, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), institutions furnishing correspondence courses must be approved. Approval of a school for use under Public Law 346 will be by the appropriate agency of the State in which the home offices of the school are located. As it is the responsibility of the State to determine which institutions are qualified and equipped to furnish education or training, it is also within the jurisdiction of the State to prescribe the standards to be met by an approved institution. The same procedure may be followed by the State in determining the standards required for correspondence courses as is followed by the State in the case of institutions offering resident instruction. The general approval given by certain State agencies to institutions covers residence courses only. Such States give separate and specific approval for correspondence courses.

(c) *Contract required.* Veterans may be enrolled under Veterans' Administration programs in only those correspondence courses of instruction or training for which contracts have been specifically negotiated with central office. The courses, including the number of lessons, price per lesson, charge for registration, charge for extra equipment, charge for bound books, and the total cost of the course, or any other charges payable are set forth in such contract. The correspondence school furnishing courses for the training of veterans under Public Laws 16 and 346 will submit vouchers for payments direct to the regional office in accordance with the terms of existing contracts. Institutions or on-the-job-training establishments shall not be permitted to negotiate with a school for a correspondence course and bill the Veterans' Administration for its cost. In no case will payment be authorized to an on-the-job-training establishment for the cost of a correspondence course used as supplemental training.

(d) *Negotiation of contracts.* All contracts and supplements to existing contracts for correspondence courses shall be negotiated by central office and decentralized to field stations. Where possible, contracts for correspondence courses will be negotiated for use under both Public Laws 16 and 346. In some instances, a separate contract may be negotiated separately for Public Law 16 and Public Law 346 enrollments. In the event that a contract is limited in scope, indication will be given either in the body or on the face thereof by a stamp impression or otherwise. Contracts negotiated for correspondence courses are usually approved for use in all States. Occasionally, however, contracts are negotiated by central office for correspondence courses of limited application as to program or region.

(e) *Period of contract.* Contracts covering correspondence courses, subject to availability of appropriations, are usually negotiated for a period of not to exceed 3 years from the date of execution of the contract, subject to extension beyond a 3-year period by mutual consent of the contracting parties. Contracts may be terminated upon written notice at the expiration of 30 days from the date of such notice at the request of either the institution or the Veterans' Administration.

(f) *Schools with which contracts are negotiated.* Information relative to negotiated contracts for correspondence courses is published in VA Bulletin 55. As additional contracts are negotiated, supplements or revisions to VA Bulletin 55 will be published listing such contracts.

(g) *Information concerning correspondence courses.* Information concerning the subject matter of courses and academic credit for such courses of institutions which are members of the National University Extension Association can be obtained from the Guide to Correspondence Study, a publication of that association. Copies of such publication have been furnished each regional office. Specific questions as to the content of courses covered in the above publication and courses included in Veterans' Administration contracts may be directed to the institutions offering the courses. The Home Study Blue Book and Directory of Private Home Study Schools and Courses, published by the National Home Study Council, Washington, D. C., also furnishes information as to courses offered by member institutions of such council.

(h) *Request for correspondence course for which no contract exists.* When a correspondence course is desired for which no contract has been decentralized to the field stations, request for a contract for the desired course may be made to central office by the school or the regional office.

(i) *Courses not included in contract.* Before any correspondence course offered by an institution with which a contract has been negotiated but which course is not included in the contract may be made available to eligible veterans, an amendment by a supplement to the original contract including such courses must be negotiated by central office.

(j) *Changes in courses.* Changes in courses made by the institution with which a contract has been negotiated during the life of the contract will become effective and a part of the contract only upon negotiation of a supplement to the existing contract. Minor changes in courses or course material not affecting the length of the course or number of lessons and not lowering the educational value of the courses or the quality of the course materials, such as revision of text, the substitution of a newer lesson for an older one, or the substitution of equipment of equal or greater value are permitted without notice.

§ 21.626 *General provisions of correspondence contracts*—(a) *Services to be furnished by institutions.* The institutions with which the Veterans' Administration contracts for correspondence courses must provide veterans enrolled under such contracts with prompt and adequate lesson service and, unless otherwise specified, must furnish veterans with the same texts, diplomas, lesson services, and other services as are normally provided for regularly enrolled nonveteran students.

(b) *Servicing of lessons.* All lessons of a correspondence course must be serviced adequately and individually by the institution contracting for such courses before payment can be made for the lessons. Grouping of lessons into units and partial servicing of individual lessons does not meet the requirement that each lesson be serviced individually. Each lesson must have a separate examination adequate in terms of lesson content as compared to the remainder of the course.

(c) *Records and reports.* The contractor will maintain records of progress of veterans in training under this contract and will make available such records and furnish such reports to the Veterans' Administration at such intervals as may be mutually determined and as may be necessary and required by the Veterans' Administration to administer the training of the veteran as required by the law.

(d) *Inspection of institution.* Duly authorized representatives of the Veterans' Administration under pertinent provisions contained in all contracts covering correspondence courses are permitted to visit the institution offering correspondence courses from time to time and at reasonable times to inspect the institution, including the records and books of account.

(e) *Length of time to complete course.* The contract form contains no limitation on the length of time required to complete a course. There will be no maximum or minimum time limit except as may be decided by the institution offering the correspondence course and required of all students. The length of time required by the institution or used by the trainee to complete a full-time course is immaterial except that the course may be pursued under benefits of Public Law 346 only to the end of the person's entitlement or to a date not later than 9 years after the termination of the present war, whichever occurs first. It is desirable that a full-time course be pursued continuously. For purposes of VA Form 7–1950b, estimated time may be used to determine length of time necessary to complete a correspondence course.

§ 21.627 *Charges and payments for correspondence courses*—(a) *Contracts required.* Payments will be made to approved institutions for correspondence courses in accordance with the rates established in the contracts approved by the Office of the Assistant Administrator for Vocational Rehabilitation and Education. No payment will be made by the Veterans' Administration for correspondence instruction in the absence of such a contract.

(b) *Charges—How determined.* Public Law 268, 79th Congress, does not permit the Veterans' Administration to pay charges in excess of those which are determined to be fair and reasonable. The rates for which correspondence courses are contracted may be equal to or less than but may not exceed the customary charges of the institution offering such courses.

(c) *Payment on "lesson completed" basis.* The policy of the Veterans' Administration is to pay only for services rendered and to make payment only in arrears. This policy, as applied to payment for education and training by correspondence, requires that payment be made on a "lesson completed" basis for assignments sent in by students to the institution and serviced by such institution during a pay period, monthly or quarterly.

(d) *Lessons must be completed and serviced.* Payment may be made only for such lessons of correspondence courses as are completed by the student and serviced by the contractor. In the event that it is necessary to service a lesson more than once, only one charge will be made for such service.

(e) *Registration fee.* A nominal registration fee is normally allowed an institution with which a contract is negotiated for correspondence courses. The registration fee is separate from other charges. An institution is entitled to payment of the registration fee, when charged, if a student has been officially enrolled in the institution and regardless of whether or not the student completes any lesson assignments. Registration fees are intended to cover only the costs incurred by an institution in actually setting up and enrolling students on the books of the institution. Payment of registration fee, if any, may be requested on the vouchers submitted by the institution for the first pay period (monthly, quarterly, or as otherwise specified in the contract).

(f) *Books, supplies, and equipment*—(1) *When furnished.* Such items will be furnished to the veteran pursuing a correspondence course only if and as needed for present and immediate use and will consist of those items required but in no instances greater in variety, quality, or amount than the institution provides other students or requires other students to provide when pursuing the same or similar courses. The Veterans' Administration has the right in all contracts for correspondence courses to specify the items of books, supplies, and equipment considered necessary for individual veterans enrolled under such contracts including veterans enrolled in correspondence courses used as supplemental training to an on-the-job training program under Public Law 346, as amended.

(2) *Payment.* Payment may be made for such items when furnished under the terms of the contract at the end of the pay period during which such items are furnished the student. Bound books and equipment including expendable supplies for which charges are listed separately in a contract may be furnished only once to the same student regardless of the number of courses which he may pursue requiring the use of the same books, equipment, and/or supplies. The voucher need not be accompanied by receipts signed by the veteran acknowledging receipt of such item. The institution will provide a statement to accompany the voucher certifying that the articles for which payment is requested were delivered to each specific enrollee and that the institution has on hand for inspection by the Veterans' Administration evidence of such delivery. If found more convenient, a statement covering such certification may be stamped or otherwise entered on the front of the voucher in which case the payee's signature on the voucher will be considered as subscribing to such statement. In some correspondence course contracts, an estimated charge may be included for books, supplies, and equipment.

(g) *Postage and expendable supplies.* Charges for postage and expendable supplies, when allowable, are usually included in the total charge for lessons in contracts covering correspondence courses. Postage may be allowed to an institution in a contract for mailing lessons or returning completed lessons to a student, but only when the institution normally charges nonveteran students separately for such postage. When the particular contract contains separate and specific charges for such items, payment will be included in vouchers submitted at the end of the pay period (monthly, quarterly, or as otherwise specified) for such postage as has been actually incurred or supplies actually furnished to the enrollee. Postage will not be furnished to veterans in training under Public Law 346 for mailing completed lessons to the school or institution.

(h) *Loss, damage, or destruction.* The Veterans' Administration will not be responsible or liable for the loss, damage,

or destruction of any books, supplies, equipment, or other items loaned or withdrawn from an institution by a veteran enrollee in connection with any enrollment under a contract covering correspondence courses.

(i) *Charges to veteran enrollees.* No charge whatever may be made to an enrollee under a contract by an institution for items covered by the contract. Contracts covering correspondence courses will contain the total price of the course including all books, supplies, and equipment normally supplied to students by the institution and considered necessary to the successful pursuit of the course, except as may be otherwise specified in the contract.

(j) *Charges not permitted.* (1) An individual will not be enrolled under a contract covering correspondence courses by the contractor where any charges in connection with such enrollment may be made against the Veterans' Administration which, in the knowledge of the contractor, would under existing or previous agreements with the contractor, normally be borne by any individual, group, firm, corporation, organization, or establishment other than the student enrolled.

(2) No deposit of any nature may be charged against the Veterans' Administration in connection with any services which the institution might render under contracts covering correspondence courses.

(3) No additional charges may be made by a contractor to a veteran or the Veterans' Administration in connection with the use of correspondence courses other than the charges specifically set forth in the contract covering such courses.

(4) The 10-percent compensation described in § 21.539 (i) allowed resident educational and training institutions for handling the issuance of books, supplies, and equipment is not applicable to correspondence courses, and such compensation may not be paid in connection with correspondence courses in addition to the charges for such items set forth in the contract.

(k) *Expenditures other than contract charges.* A veteran enrolled in a correspondence course under Public Law 346 may not be furnished at Government expense for use in connection with the pursuit of such correspondence course any additional books, supplies, equipment, or services other than those that are required to be provided by the contractor under the terms of the contract covering the particular correspondence course.

(l) *Catalog, brochures, and other publications incorporated in contract.* The charges, courses, and other provisions of only such catalog, brochures, or other publications as are specifically incorporated in a contract covering correspondence courses will be applicable to the contract. When an institution revises or otherwise changes any catalog, brochure, or other publication which has been incorporated in the contract, the revised or changed editions do not become a part of the contract unless so included by a supplement to the original contract negotiated by central office. It is the policy of central office to eliminate such attachments, when possible, in negotiating contracts and to furnish them for information purposes only in individual instances.

(m) *Billing by institutions.* (1) Institutions will bill for charges contained in contracts covering correspondence courses in the following manner:

(i) Prepare voucher, SF 1034. Charges covering individual veterans may be listed on continuation sheet, SF 1035, or separate invoices for each veteran trainee may be attached to voucher, SF 1034. A number of invoices (normally not more than 50) may be submitted with one voucher.

(ii) The following will also be shown on each voucher or invoice:

(*a*) Name and C-number of each veteran trainee.

(*b*) Date of enrollment.

(*c*) Course.

(*d*) Individual charges for each trainee.

(*e*) Period covered by the charges for each trainee.

(*f*) Contract number and total charges.

(*g*) The face of the voucher will show the authority for the expenditure, for example, "Public Law 346, 78th Congress, as amended."

(2) Vouchers will be submitted by the institution furnishing the correspondence course to the regional office which has jurisdiction over the area in which the veteran resides. When a trainee transfers from the jurisdiction of one regional office to training under the jurisdiction of another regional office, payment of all outstanding vouchers will be effected by the regional office having jurisdiction over the veteran at the time of the training, that is, the office from which the veteran is transferred. Where there is an outstanding account, information required to process subsequent vouchers will be made of record before the claims folder is transferred. When vouchers are received in the regional office they will be routed direct to the finance division for audit and certification for payment. When a voucher is received by a regional office representing charges for a period of training rendered after the transfer of a veteran to the jurisdiction of another regional office, the voucher will be forwarded for payment to the regional office to which the veteran has transferred and the institution so notified, unless the voucher also contains billing for other veterans. In the latter event, there will be suspended from the voucher the charges for the transferred veteran and the institution will be notified of the reason for the suspension and advised of the correct name and address of the regional office to which billing should be made.

(3) Vouchers covering correspondence courses must be itemized so that charges against each enrollee covered by the voucher may be identified with specific charges as set forth in the contract. Charges for completed lessons must indicate the particular lesson or lessons for which payment is requested. When the contract sets forth the charge for a particular item of equipment, the voucher must list such item of equipment. Where a number of invoices are submitted with one voucher or invoices are scheduled for a number of veteran trainees, all of such veterans must be enrolled from an area under the jurisdiction of the same regional office.

(4) A separate voucher will be submitted for a student transferring from training under Public Law 346 to training under Public Law 16 after his training has begun. Charges must be prorated according to services rendered under each law, and a separate voucher submitted for each period of training.

(5) Separate vouchers and/or invoices will be prepared when request is made for payment of charges for which refund of the amount of such charges has been made to a veteran. Charges for more than one veteran may be included on the same voucher except when only a portion of the charge for which payment is requested represents a refund to the veteran. Where a refund is involved, a separate invoice for the particular veteran must be prepared, and the additional certificate required in connection with refunds should be amended to indicate the specific amount of the charge which has been refunded to the veteran.

(6) It is the school's responsibility to determine whether a lesson has been satisfactorily completed for billing purposes. A student does not necessarily need to have made a passing grade in order for the school to be entitled to charge for the lesson under the terms of the contract. In the event the school requires further study and possible resubmission of a lesson, the school may not be paid more than once for the servicing of the same lesson.

(7) As payment may be made only for correspondence courses of instruction or training for which contracts have been specifically negotiated by central office of the Veterans' Administration, payments may not be made to an institution including an on-the-job training institution for a correspondence course obtained from another institution. Further, no payment may be made for instructional or lesson service when charges for such items are included in vouchers or invoices covering books, supplies, or equipment submitted by an individual or institution other than a correspondence school with which a contract exists covering such services. Instances have come to the attention of central office of field stations purchasing textbooks for veterans, usually pursuing an on-the-job training program, where the purchase of such books includes lesson servicing in connection with the use of the book by the institution selling the book. In such instances the purchase of the book actually represents the purchase of a correspondence course, and such a book may only be purchased when a contract has been negotiated by central office for the correspondence course represented by the book.

(n) *Certificate required on vouchers.* The following additional certificate will be required on all vouchers submitted for payment of charges covering correspondence courses:

I hereby certify that the charges made herein are in accordance with the provisions of Contract No. VA–vr– ----------, that the veteran trainee concerned has com-

pleted the lessons for which charges are made, that such lessons have been serviced by the contractor, that books, supplies, equipment, or other services have been furnished to the veteran trainee, and the institution has evidence of such delivery on hand for the inspection of the VA. This certifies that no amount received from the Government is used or will be used as a prize, rebate, or other payment in goods or money to the veteran trainee.

The above certificate may be either imprinted, typed, or impressed with a rubber stamp on the voucher, depending on the billing method used by the institution.

(o) *Checking vouchers against monthly supervisory report of veteran.* It will be the responsibility of the finance officer to check all vouchers or invoices covering correspondence courses against the applicable contract. Payment on vouchers submitted by institutions for services rendered to veterans pursuing correspondence courses will not be withheld for the reason that the field office having jurisdiction and responsibility of the case has not received an applicable monthly supervisory report or a statement from the veteran for the month covered by the voucher submitted, nor is it required that vouchers be checked against such reports before payment is made of the voucher, when the institution submitting the voucher certifies that the services have been rendered or the lessons have been completed, as the case may be, by the student. However, the provisions of this subparagraph are not to be construed as limiting the right of the finance officer charged with the payment of a voucher from checking the reports set forth above or from withholding or refusing payment on all or part of any voucher when, in his opinion, such action is warranted or justified.

(p) *Period covered by vouchers or invoices.* Vouchers or invoices may be submitted by an institution at the end of the month, quarter, or other period set forth in the contract during which lessons were completed or services were furnished or rendered to the student.

§ 21.628 *Refunds*—(a) *Vouchers representing refunds to veterans.* The Veterans' Administration will pay, at regular billing periods to an approved institution with which a contract has been negotiated, for such lessons as are completed, bound books, equipment, supplies, and other services actually furnished and included in the contract for which an eligible veteran pursuing the course may have made payment to the institution. Payment will be made in such instances upon certification by the institution that it has refunded to the veteran the amount for which payment is requested from the Veterans' Administration.

(1) In no case where a veteran resumes or continues under an existing contract a course in which he has been previously enrolled will the total amount to be paid by the veteran and the Veterans' Administration exceed the cost of the course including the registration fee, books, supplies, equipment, or other charges as are set forth in the contract.

(2) The Veterans' Administration may not be charged for any lesson service or other service, registration fee, books, supplies, or equipment furnished under a contract for which payment has been made by a veteran without proper certification by the institution of refund to the veteran for such amount. In requesting payment, the institution need not present a receipt signed by the veteran acknowledging refund, but the institution should certify that such institution has on hand for inspection by the Veterans' Administration evidence of such refund.

(3) To determine whether a veteran is entitled to a refund, the registration fee, if any, and charge for books, supplies, equipment, lessons completed, or other services rendered the veteran by the institution prior to pursuing the course under Veterans' Administration programs will be calculated at the charges for such services set forth in the contract. If the total amount paid by the veteran exceeds the amount that would have been payable for such services under the contract, the veteran will be entitled to refund for the balance to the extent that services are rendered under the contract and as set forth in subparagraph (4) of this paragraph.

(4) It is not the policy of the Veterans' Administration to require an institution with which a contract is negotiated to refund payments which it had previously collected from a veteran except to the extent of the school's right to obtain payment from the Veterans' Administration for the moneys which it has refunded to the veteran enrollee. However, where a veteran has paid to the institution an amount in excess of the total charges set forth in the contract for the course, it is the responsibility of the institution to further refund to the veteran in accordance with the provisions of subparagraph (3) of this paragraph the difference between the total contract price and the amount paid by the veteran. The Veterans' Administration will not require the institution to refund this excess payment except to the extent the institution is entitled to bill the Veterans' Administration for an amount which will assure the institution of receiving the total charges for the course as covered by the contract.

(5) The following additional certificate will be required on all vouchers submitted for payment of charges covering correspondence courses when the institution has refunded to the veteran the amount for which payment is requested from the Veterans' Administration:

I hereby certify that the payments requested above cover services rendered to the veteran for which payment had been made by the veteran and subsequently refunded by the institution to the veteran. I further certify that the institution has on hand for inspection by the Veterans' Administration evidence of such refund.

(b) *Period for which refunds authorized.* Refunds may be made by an institution to a veteran with expectation of payment from the Veterans' Administration only for work completed after the effective date of the contract between the institution and the Veterans' Administration covering the specific correspondence course or after the date the veteran files a formal or informal application for a certificate of eligibility, whichever is later. When the effective date of the contract is not specifically indicated in the contract, the effective date of the contract is the date of approval of the contract by the Veterans' Administration.

(c) *Refund of registration fee.* In the case of a veteran continuing under Veterans' Administration programs a course in which he had previously enrolled, no registration fee will be paid by the Veterans' Administration on behalf of such veteran for enrollment in such course.

CONTRACT TERMINATION

§ 21.637 *Termination of contracts under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).* Contracts under Part VII contain no provision for termination, since the Veterans' Administration has the complete responsibility for the veteran-trainee. However, when the regional office considers that fraud has been committed against the Government, or that the contractor is not furnishing the courses of instruction as required by the terms of the contract and the contractor has refused to correct the condition, or that the best interests of the Government or trainees will be served by termination to be effected by the withdrawal of trainees from the establishment or institution, the full particulars pertaining to the desired termination will be forwarded to the branch office together with the recommendations of the regional office for review by that office and transmittal to central office.

§ 21.638 *Termination of contracts under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12).* (a) Article 6 of VA Form 7–1903b for contracts under Part VIII authorizes the Veterans' Administration to terminate a contract in its entirety or partially upon notice in writing to the contractor 60 days prior to the effective date of termination. The regional office is authorized to cancel the entire contract or any part thereof without prior approval when it is determined that all or part of the services furnished under the contract will no longer be required for training eligible veterans and that such termination of the contract is, therefore, desirable.

(b) When the regional office considers that fraud has been committed against the Government, or that the contractor is not furnishing the courses of instruction as required by the terms of the contract and the contractor has refused to correct the condition, or that the best interests of the Government or trainees will be served by a partial or total termination, the full particulars pertaining to the desired termination will be forwarded to the branch office together with the recommendation of the regional office for review by that office and transmittal to central office for the authority to terminate the contract pursuant to the provisions of article 6 of the contract, VA Form 7–1903b.

REIMBURSEMENT TO VETERANS

§ 21.646 *General restriction.* The Veterans' Administration will not reimburse a veteran who pays personally for tuition, incidental fees, books, supplies, and

equipment, and/or other necessary expenses. Under certain circumstances, a Part VIII, Veterans Regulation 1 (a), as amended (U. S. C. 38, ch. 12), trainee may be reimbursed by the institution. (See § 21.647.)

§ 21.647 *Refunds to persons who were enrolled as Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), trainees in a course of education or training while on terminal leave or while hospitalized pending discharge during the period June 22, 1944, to December 28, 1945.* (a) Under the provisions of Public Law 268, 79th Congress, a person while on terminal leave, or while hospitalized pending final discharge, may be afforded education or training benefit (except that no subsistence allowance shall be paid in such case) subject to all the statutory conditions pertaining to eligibility except actual discharge or release from active service, effective June 22, 1944.

(b) The Veterans' Administration will refund to an institution any payments which a person made to the institution for tuition, fees, books, supplies, and equipment, provided all the following conditions are met:

(1) That the person obtain from the institution in which he was enrolled a certified statement showing:

(i) The period during which the person was enrolled.

(ii) The course of study pursued and the amount paid by the person for tuition, fees, books, supplies, and equipment.

(iii) That the money paid to the institution by the person has been refunded by the institution to the person.

(2) That the person certifies the accuracy of the statement required under subparagraph (1) of this paragraph and submits this statement with the following papers to the regional office of the Veterans' Administration having jurisdiction over the area in which the person resides:

(i) A certified copy or photostatic copy of authorization placing him on terminal leave or, in the case of a person hospitalized pending final discharge, a statement by the proper official of the station, post, or hospital in which he was receiving treatment, including information as to the date of his discharge or probable date if he is still hospitalized.

(ii) An application for education or training (VA Form 7–1950) if such an application has not previously been submitted for some other purpose.

(3) That the approval of the institution by the appropriate agency of the State cover the period during which the person was enrolled.

(4) That the sum of money to be refunded not exceed the amount which the Veterans' Administration would have been authorized to pay for education or training under Veterans' Administration instructions in effect at the time the person received the education or training.

(c) An institution will be required to submit to the same regional office to which the veteran submits the papers required under paragraphs (B) (1) and (B) (2) (i) of this section a public voucher covering amounts refunded to a person under these instructions.

TIME OF PAYMENT

§ 21.655 *General.* (a) Payments for tuition, incidental fees, books, supplies, and equipment to training institutions will be made in arrears only and will be prorated in installments over the school year or over the length of the course as provided herein, except as provided in §§ 10.656 and 10.657.

(b) The period for which payment of charges may be made will be the period of the veteran's actual enrollment in the institution and will be subject to the following:

(1) The effective beginning date will be the date of the veteran's authorized entrance into training status (as shown on VA Form 7–1950), except that payment will be made for an entire semester, quarter, or term in institutions operating on that basis if the veteran enters not later than the final date set by the institution for enrolling for full credit.

(2) If an institution customarily charges for the amount of credit or number of hours of attendance for which a veteran enrolls, payment may be made on that basis when a veteran enters after the final date permitted for carrying full credit for the semester or term.

(3) The terminal date to which payment will be made is the day following:

(i) The end of the semester, term, or quarter during which the educational service is furnished.

(ii) The date of interruption or discontinuance of training.

(iii) The date of completion of the course.

(4) Expiration of entitlement. (See § 21.519.)

§ 21.656 *Time of payment to institutions for residence courses for Parts VII and VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12) trainees and basis for determining amount payable*—(a) *Payment on a monthly or other basis.* Institutions, both profit and nonprofit, may submit bills for payment in arrears for the education or training of veterans on a monthly basis or at other periods to suit the convenience of the institution.

(b) *Payment for books, supplies, and equipment.* Institutions may submit bills and be paid for books, supplies, and equipment issued to veterans in accordance with existing regulations immediately after the issuance of such materials. (See §§ 21.539 and 21.540.)

(c) *Payments to other than nonprofit institutions.* In all cases where veterans are enrolled in other than nonprofit institutions, the payment of tuition and fees will be made in arrears prorated on the basis of the veteran's period of attendance.

(d) *Provisions for payment to nonprofit institutions after expiration of refund period.* (1) Nonprofit educational institutions which have a refund policy providing for a graduated scale of charges for purposes of determining refunds, at least equivalent to that set forth in paragraph (e) of this section, or those institutions which are willing to adopt such a policy with reference to veteran trainees, may submit a bill and be paid part or all of the entire amount of the allowable tuition and other fees for a term, quarter, or semester of 19 weeks or less immediately following the date on which the refund period expires as designated for each of the following bases of payment:

(i) *Customary charges or other than customary charges (Alternatives 1, 2, or 3, §§ 21.472 through 21.474).* Payment will be made in full for the entire term, quarter, or semester immediately following the expiration of the refund period. The graduated scale of charges of the institution will also be applicable for purposes of determining the payment to be made for veterans withdrawing or discontinuing before the expiration of the refund period.

(ii) *Estimated cost of teaching personnel and supplies for instruction (Alternative 4, § 21.475).* (a) Payments on this basis consist of tuition at a rate per credit hour plus the other regular nontuition fees of the institutions such as laboratory, student health, library, and student activity fees. After the expiration of the refund period or as soon thereafter as the institution is able to determine the number of credit hours for which a student is enrolled and for which performance will be finally recorded on the records of the institution, the institution may bill and be paid for the full amount of tuition at the contract rate per credit hour and for the full amount of the other customary nontuition fees charged by the institution. The "number of credit hours for which performance will be recorded" means those credit hours of work for which the student is finally enrolled after the expiration of the period during which a student is permitted to change courses without penalty insofar as credit is concerned. The credit-hour valuation used for purposes of calculating the payment will be the normal credit offered by the institution for the subject or course involved without regard to the fact that performance may finally be recorded in any one of a number of various terms, such as full credit, withdrawn, incomplete, or such other official record of performance as may be made by the institution following the expiration of the date for change of course without penalty.

(b) The basis of determining the number of credit hours for purposes of payment should be comparable to the basis used by the institution in calculating the number of credit hours for purposes of determining the rate of payment.

(2) Nonprofit educational institutions which do not have or will not accept a graduated scale of charges for purposes of determining refunds at least equivalent to that set forth in paragraph (e) of this section will be required to prorate charges on the basis of actual attendance for veterans withdrawing or discontinuing prior to the close of the period and will be paid in arrears for that pro rata part of the charge for services rendered during the period covered by vouchers submitted for payment.

(e) *Schedule of maximum charges acceptable as a basis for payment to nonprofit institutions.*

Period of veteran's actual attendance in institution from date of enrollment.	Length of semester, quarter, or course, and percent of tuition and fees to be charged					
	16–19 weeks (inclusive)	12–15 weeks (inclusive)	9–11 weeks (inclusive)	6–8 weeks (inclusive)	3–5 weeks (inclusive)	1–2 weeks (inclusive)
	Per-cent	Per-cent	Per-cent	Per-cent	Per-cent	Per-cent
1 week or less	20	20	25	40	50	60
Between 1 and 2 weeks	20	40	50	80	100	100
Between 2 and 3 weeks	40	60	75	100	100	----
Between 3 and 4 weeks	60	80	100	100	100	----
Between 4 and 5 weeks	80	100	100	100	100	----
Over 5 weeks	100	100	100	100	----	----

(f) *Fees for noncontinuing services.* The graduated scale of charges will not apply to a fee which is for a noncontinuing service and not subject to refund under any conditions such as a registration fee.

(g) *Fees for flight training courses.* The graduated scale of charges will not apply to fees for flight training courses for veterans. Payment for flight training for veterans will be made only for the actual hours of flight and ground instruction furnished to the veteran. Where the charge for flight training is stated by the institution as a fixed charge for the course and is not stated as a charge per hour of instruction, the hourly rates for dual, solo and ground instruction will be determined by prorating the total charge for the course to the maximum scheduled hours of flight and ground instruction included in the course. The provisions of this paragraph will be applied to all payments made for services rendered for terms, semesters, or quarters beginning subsequent to September 1, 1947, where contracts are not required or in effect for such terms, semesters, or quarters. Future contracts negotiated with nonprofit institutions which include therein a provision for payment for flight courses for eligible veterans will specify the hourly rates for flight and ground instruction at which payment will be made by the Veterans' Administration for veterans.

§ 21.657 *Advance payment of tuition and other allowable charges to nonprofit colleges and universities under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12)*—(a) *Purpose.* The method of advance payment of tuition and other necessary charges is intended for application only in the case of well-established nonprofit colleges and universities to provide relief for such institutions that have heretofore generally required students to pay tuition in full at the beginning of the term, semester, or quarter and have suffered serious financial hardship as a result of receiving payment in arrears for veterans enrolled under Public Law 346, as amended.

(b) *Authority.* (1) It has been determined that the Veterans' Administration is authorized, pursuant to the authority vested in the Administrator to carry out the provisions of paragraph 5, Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12) to make advance payments of tuition and other allowable charges to nonprofit colleges and universities for resident instruction where it is the customary practice of the institution to collect tuition and other charges from students at the beginning of the term (Comptroller General's Decision B–56585, May 1, 1946).

(2) Managers of regional offices are authorized to enter into agreements for advance payments to nonprofit colleges and universities in accordance with the procedures outlined herein when all of the following provisions are met:

(i) The college or university submits a letter to the Manager stating that if the Veterans' Administration does not make advance payments to the institution for veterans enrolled under the benefits of Part VIII, it will impose a financial burden upon the institution of such proportions as to create a serious hardship.

(ii) The manager determines that it is the customary practice of the college or university to require students to pay tuition, fees, and other necessary charges in full at the beginning of the term, semester, or quarter and that the advance payment procedure is necessary for the relief of the institution involved.

(iii) The manager determines that the interests of the Government will be protected adequately in the arrangement for advance payment. (The manager will not enter into agreements for advance payments to any institution when, in his judgment, it is considered that the interests of the Government are not adequately protected in such arrangement.)

(c) *Contracts required for advance payments.* (1) In all cases where the procedure for advance payment is approved by the manager, a written agreement covering such arrangement must be executed between the institution and the Veterans' Administration. This written agreement will either be a part of the regular contract with the institution, if a contract is required for the education and training of Part VIII veterans under existing regulations, or will be a separate agreement where a contract is not otherwise required.

(2) The written agreements will be provided as follows:

(i) *No contract required.* (a) Where a contract with a nonprofit institution is not otherwise required for veterans enrolled under the benefits of Part VIII, in accordance with existing Veterans' Administration regulations and instructions, and the institution has requested payment in advance and such advance payment is approved by the manager, a contract for advance payment will be executed, and the method of advance payment of tuition and other necessary charges will be elected by the institution in lieu of all other methods of payment while the contract for advance payment remains in force.

(b) Contracts for advance payments executed in accordance with this paragraph to be effective July 1, 1948, and subsequent thereto will be identified as to number and symbol as provided by § 21.576. Contracts which are made to provide advance payments will be distributed in the same manner as contracts for education and training under Part VIII.

(ii) *Contracts already executed.* (a) Where a contract with a nonprofit institution has been executed for veterans enrolled under the provisions of Part VIII, and the institution requests payment in advance and such payment is approved by the Manager, a supplemental contract will be negotiated to incorporate the method of advance payment of tuition and other necessary charges in lieu of the provisions for payment outlined in the original contract.

(b) Contract supplements will be distributed in the same manner as the original "ve" contracts.

(iii) *New contracts.* Where there is no contract and a contract with a nonprofit institution is required under existing Veterans' Administration regulations for veterans enrolled under the benefits of Part VIII, or where the previous contract has expired and the nonprofits institution has requested payment of tuition in advance and such payment has been approved by the Manager, provision will be made in the original or renewed contract by attaching the schedule for payment of tuition charges as a separate schedule to become a part of the contract by reference in article 2 (a) of VA Form 7–1903b, Contract for Education and Training, Public Law 346, 78th Congress, as amended.

(d) *Effective date.* Advance payments may be made for any term, semester, or quarter in process on, or beginning after the date of execution of the necessary contract or supplement to an existing contract.

§ 21.658 *Advance payment of tuition and other allowable charges to States for instruction under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch 12)*—(a) *Purpose.* The method of advance payment of tuition and other necessary charges as outlined herein is intended for application only in the case of designated State agencies which have been approved as educational institutions to furnish vocational instruction to eligible veterans enrolled under the provisions of Part VIII. The procedure outlined herein is established to provide financial relief to such State educational institutions by advance payment of tuition, fees, and other necessary expenses to the institution for eligible veterans enrolled under the provisions of Part VIII. Advance payments as authorized herein will be limited to those cases where a single State agency is approved as an educational institution under the provisions of Public Law 346, as amended, and is responsible for furnishing institutional on-farm instruction or other vocational instruction to eligible veterans who elect to enroll in such institutions. If separate agencies are responsible for the different types of training, separate contracts may be made with such separate agencies.

(b) *Authority.* (1) It has been determined that the Veterans' Administration is authorized, pursuant to the authority contained in section 1500, title VI, Public Law 346, 78th Congress, as amended, to make advance payment to State institutions for tuition, fees, and other necessary expenses. Advance pay-

ment as outlined in this paragraph will be made for 4-month periods defined as follows: First period—July, August, September, October; second period—November, December, January, February; third period—March, April, May, June.

(2) Managers of regional offices are authorized to enter into agreements for advance payments to State institutions in accordance with the procedures outlined herein when all of the following provisions are met:

(i) An authorized official of the State certifies that if the Veterans' Administration does not make advance payments to the institution for instruction furnished to eligible veterans enrolled under the provisions of Part VIII, it will impose a financial burden upon the State of such proportions as to create a serious hardship.

(ii) The institution agrees to submit vouchers for instruction to be furnished to eligible veterans enrolled under the provisions of Part VIII, on or after the first day of each 4-month period.

(c) *Contract required for advance payments.* In all cases where the procedure for advance payment is approved by the manager, a contract will be required with the institution covering the vocational instruction to be furnished by the institution to eligible veterans enrolled under the provisions of Part VIII, and the advance payment procedure will be incorporated as a part of such contract. Where contracts have already been negotiated and are in effect covering vocational instruction to be furnished by a State institution, the advance payment procedure may be incorporated in such contract through the execution of a supplement as prescribed by the Veterans' Administration. Where no contract exists between the institution and the Veterans' Administration covering the vocational instruction to be furnished by the institution to eligible veterans enrolled under the provisions of Part VIII, a contract will be negotiated, and the advance payment procedure will be incorporated in such contract as a separate schedule as prescribed by the Veterans' Administration. A single contract may be negotiated with the institution covering all of the vocational instruction furnished within the State, in which event, if more than one regional office exists within the State, the regional office having jurisdiction over the area in which the institution's headquarters is located should conduct negotiations with the State and should prepare the contract to be submitted to the other regional offices for approval. Finance officers at all other regional offices should be furnished with copies of the approved contract. If the State so desires, separate contracts may be negotiated with each regional office having jurisdiction over the area within the State in which veterans may be enrolled in the institution for vocational instruction under the provisions of Public Law 346, as amended. Vouchers will be submitted to and payments made by the regional office having jurisdiction over the area in which the veterans are in training.

(d) *Effective date.* Advance payments may be made for any 4-month period in process on or beginning after the date of execution of the necessary supplement or schedule to an existing contract with the institution.

VOUCHERS OR INVOICES FOR PAYMENT

§ 21.666 *Vouchers or invoices for amounts due the institution.* (a) Vouchers or invoices for tuition and incidental fees, with or without charges for books, supplies, and equipment, may be submitted to the Veterans' Administration regional office for payment in accord with the provisions of §§ 21.655 through 21.657.

(b) Vouchers or invoices for books, supplies, and equipment, if prepared separately, may be submitted at any time after the issuance of the items to the trainees. (See § 21.539 (f) for details.)

§ 21.667 *Data on voucher, invoice, or supporting schedule.* (a) Vouchers will be in sufficient detail to permit a proper audit of the account for each veteran. On each voucher, invoice, or separate schedule attached will be shown:

(1) Name and C-number of the trainee exactly as written on pertinent Veterans' Administration Forms 1900, 1953, or 7–1950.

(2) Date of his enrollment.

(3) Course.

(4) The individual charge for each trainee.

(5) Period covered by the charge.

(6) Unitemized total for books, supplies, and equipment issued to the trainee.

(b) Where it is the practice to cover tuition and all other items in one amount, it will be sufficient to state tuition, fees, books, supplies, and equipment without breakdown.

(c) Where it is the practice as reflected in the institution catalog or otherwise or if so indicated in the contract to indicate the charges separately as to tuition, incidental fees, books, supplies, and equipment, the voucher or supporting schedule should show the amount applicable to each such general breakdown.

(d) The face of the voucher will show the authority for expenditure for Part VIII trainees as "Public Law 346, 78th Congress," and for Part VII trainees as "Public Law 16, 78th Congress."

§ 21.668 *Exclusion of Federal admission taxes from payments to educational institutions for education and training under Public Laws 16 and 346, 78th Congress, as amended*—(a) *Payments to institutions to exclude Federal admission taxes.* Section 3 of the act of August 12, 1935, Public Law 262, 74th Congress, provides in part that "* * * payments made to or on account of a beneficiary under any of the laws relating to veterans shall be exempt from taxation * * *" Section 1500, title VI, Public Law 346, as amended, provides that, except as otherwise stated, the provisions of Public Law 262 shall be applicable. In view of these provisions of Public Law 262 and Public Law 346, as amended, payments made to institutions for education and training under Public Laws 16 and 346, as amended, are subject to the provisions of section 3 of Public Law 262. Therefore the tax imposed by section 1700 (a) of the Internal Revenue Code, as amended, does not apply to payments made by the Veterans' Administration covering admission charges to athletic and other events on behalf of veterans attending schools and colleges under the provisions of Public Laws 16 and 346, as amended. No admission taxes will be included in bills submitted by educational institutions to the Veterans' Administration where such bills cover the customary charges required to be paid by all students and where the payment of such charges entitles the student (veteran) to admission to athletic and other events. Such admission taxes ordinarily would be included in the required fee designated by the institution as "student activity fee" or in a required customary charge which includes, among other things, the privilege of the students to attend athletic and other events for which admission normally would be charged.

(b) *Certification.* In addition to the certification appearing on SF 1034, Public Voucher for Purchases and Services Other Than Personal, or on the original invoices submitted by educational institutions for payment of tuition and fees, where the charges of the institutions involve payment of required customary fees which entitle the student to admission to athletic and other events, the SF 1034, or the original invoices, if SF 1034 is not used, must bear the additional certification that the amount billed does not include any Federal admission taxes imposed by section 1700 (a) of the Internal Revenue Code, as amended. This additional certification may be inserted on the face of SF 1034 or on the original invoice or invoices by the institutions through use of a rubber stamp if desirable.

(c) *Effective date.* Vouchers which are submitted on and after September 1, 1947, covering payment of tuition or fees which entitle students to admission to athletic or other events, will not be paid without the certification that the amounts claimed are exclusive of Federal admission taxes. No adjustments will be required by Veterans' Administration for payments on vouchers which have been submitted prior to September 1, 1947, by educational institutions where such vouchers may have included taxes imposed by section 1700 (a) of the Internal Revenue Code, as amended.

§ 21.669 *Certification by the institution.* (a) Where the institution does not submit SF 1034, the original invoices submitted by institutions for the payment of tuition, fees, books, supplies, and equipment will contain the following certification:

> I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards and all conditions of purchase applicable to the transactions have been complied with; and that State and local sales taxes are not included in the amounts billed.

(b) For certificate on voucher covering books, supplies, and equipment, either billed separately or with tuition and fees, see §§ 21.539 and 21.540.

§ 21.670 *Irregular items.* In those cases where a voucher contains an irregular item, the allowability of which is questionable in the light of existing regulations and policies, the finance division will submit the voucher to the chief, training facilities section, for a determination as to the allowability of the item in question and, if appropriate, an interpretation or amplification of current applicable regulations and policies.

§ 21.671 *Vouchers for a Parts VII or VIII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12), trainee who transfers from the jurisdiction of one regional office to the jurisdiction of another regional office.* The payment of vouchers covering tuition, fees, books, supplies, and equipment for trainees who transfer from the jurisdiction of one regional office to training under the jurisdiction of another regional office will be effected by the station having jurisdiction of the veteran at the time of the training, i. e., the office from which the veteran is transferred. The foregoing applies to cases where there is an outstanding account. Information required to process the voucher will be made of record before the claim folder is transferred.

SUBPART D—ADVISEMENT AND GUIDANCE

§ 21.700 *Advisement and guidance under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12).* Advisement and guidance shall be provided each disabled person who applies for vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), and who meets the eligibility requirements set forth in § 21.040 (a), (b), and (c). The advisement and guidance services will include determining whether the person is in need of vocational rehabilitation and when such need is found to assist him in the selection of an employment objective and such training courses as will enable him to secure employment in an occupation best suited to his individual capacities and compatible with his disability. The selection of an occupation in which rehabilitation is to be effected will be based upon consideration of the person's interests, aptitudes, abilities, educational background, work experiences, personality traits, limitations imposed by disabilities, and any other relevant factors in relation to the characteristics, requirements, and employment opportunities of occupations. Standards of counseling will be maintained in accordance with accepted professional practices and trained vocational advisers will adhere to the principles of advisement and guidance as prescribed in vocational rehabilitation and education procedures. Placement counseling, educational guidance, group guidance, personal adjustment counseling, special rehabilitation techniques, and other accepted counseling methods will be utilized as necessary to prescribe such vocational rehabilitation course as will fit the person for employment consistent with the degree of disablement.

§ 21.701 *Need for vocational rehabilitation to be determined in each case.* (a) A determination as to whether there is need for vocational rehabilitation will be made for each claimant who applies and is otherwise eligible for vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), in accordance with advisement and guidance principles set forth in vocational rehabilitation and education procedures. Inasmuch as the statutory provisions respecting entitlement include the requirement that a person establish as a fact that he "is in need of vocational rehabilitation to overcome the handicap" of his service-connected disability, the requisite that need be existent at the time of determination is substantive and not merely procedural. The question to be answered, therefore, is whether the handicap due to the disability is of such character as to constitute a need of vocational rehabilitation for the purpose of restoring the employability lost by reason of the handicap.

(b) A determination that "need for vocational rehabilitation is not established" will be made if one of the following four exceptional conditions is found to exist:

(1) *First condition: Claimant is suitably employed.* If the claimant is regularly employed in an occupation which is as suitable for him, considering his disability and all the factors essential to holding employment, as any other occupation for which it is practicable to provide training.

(2) *Second condition: Claimant is employable in a suitable occupation.* If the claimant is not employed, but is able, in the opinion of vocational rehabilitation and education personnel, to be employed in an occupation which is as suitable for him, considering his disability and all the factors essential to securing and holding such employment, as any other occupation for which it is practicable to provide training.

(3) *Third condition: Training not medically feasible.* If the claimant's disability is such as to require medical rehabilitation rather than vocational rehabilitation because training in general is not medically feasible. Final determination that this condition exists will be made by the vocational rehabilitation board. (See § 21.715)

(4) *Fourth condition: Claimant fails to cooperate.* If after thorough and careful advisement, considering the claimant's ability to meet the training and the employment requirements, it is found to be impracticable to select or determine with the agreement and cooperation of the claimant, an employment objective and a course of rehabilitation that can be completed within the training period legally allowable so as to restore employability. In each of the following instances, a determination that "need for vocational rehabilitation is not established" is justified under this condition: (i) Claimant refuses to submit to a medical examination considered necessary for the purpose of determining feasibility of training; (ii) claimant insists upon training for a specific objective excluding all others, when that objective is considered to be inappropriate for the claimant's rehabilitation; (iii) A claimant who has previously been found to be in need of rehabilitation fails or refuses without adequate reason to attend classes or training sessions previously agreed upon.

(c) A determination, or a redetermination, of need for vocational rehabilitation will be made whenever a veteran who is otherwise eligible for such benefits and whose status is one of those described below requests induction into training under Part VII:

(1) A veteran who entered training under Part VIII prior to making application for vocational rehabilitation.

(2) A veteran who entered training under Part VIII while a determination of need for vocational rehabilitation was pending.

(3) A veteran who entered training under Part VIII after having been found in need of vocational rehabilitation.

In the type of cases indicated in subparagraphs (1), (2), and (3) of this paragraph when a determination is made that "need for vocational rehabilitation is established" the veteran's training status and subsistence allowance under Part VII will begin with the actual date of his induction into training under that part regardless of whether the course selected under Part VII is the same or different from that which the veteran pursued under Part VIII.

§ 21.702 *Delegation of authority to determine need for vocational rehabilitation.* Authority to determine whether a disabled person who applies for benefits under Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12), is in need of vocational rehabilitation is vested in the vocational rehabilitation and education divisions of regional offices and in vocational rehabilitation and education sections of Veterans' Administration hospitals.

§ 21.710 *Review of initial determination that need for vocational rehabilitation is not established.* When in accordance with the prescribed advisement and guidance procedure an initial determination is made that an applicant for vocational rehabilitation under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), is not eligible to the benefits under that part, because of not being in need of vocational rehabilitation or for other reasons, the available evidence relating to the case will be considered by a reviewing committee in accordance with vocational rehabilitation and education procedures. If the reviewing committee concurs in the initial determination that the applicant is not eligible to the benefits under Part VII, the reasons upon which the committee's determination is based will be recorded on the prescribed form which will be signed by each member of the committee.

§ 21.711 *Redetermination of need—(a) Prior to induction into training.* Once a determination of need for vocational rehabilitation has been made, regardless of whether training is to be provided in the regional territory in which the determination is made or in the territory of another regional office to which the veteran is transferred, the case will not be opened for redetermination of need unless: (1) There is evi-

dence of error of fact or law or (2) there is new and additional evidence which clearly indicates the necessity for reconsideration of need.

(b) *After induction into training.* (1) When upon the basis of a proper determination of need a claimant has been inducted into training, the question of need will not be reopened with a view of discontinuing training merely because of a decrease in the disability even though the decrease be such that the disability rating is reduced to less than compensable degree.

(2) Need will be redetermined in the course of making revaluations only in those cases in which the failure to accomplish vocational rehabilitation through the plan formulated in previous advisement is due to factors within the claimant's control.

§ 21.715 *Medical feasibility for vocational rehabilitation.* A determination as to whether it is medically feasible for a claimant to pursue a course of vocational rehabilitation will be made in each case by a medical consultant in accordance with vocational rehabilitation and education procedures. When as a result of the application of these procedures it is the opinion of the medical consultant that such training is not medically feasible the case will be subject to review by a vocational rehabilitation board. Upon due consideration of all the evidence, the board will determine feasibility and the course of action to be pursued in the case. When a claimant may not be inducted into training because of either permanent or temporary unfeasibility a determination that "need for vocational rehabilitation is not established" will be made. This determination will remain in effect until such time as there may be a redetermination that due to the improvement in the claimant's physical or mental condition, medical feasibility for training and need for vocational rehabilitation are established.

§ 21.720 *Advisement and guidance during the 60-day period following reduction of disability rating to less than 10 percent.* When a veteran having a disability rating of 10 percent or more has his rating reduced to less than 10 percent, he does not, subsequent to the date of the reduced rating, meet the eligibility requirement for entrance into training under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C. ch. 12), even though he may continue to receive, for a period of 60 days or more, compensation payments based on his former rating in accordance with § 21.009 (e) and paragraph III (b), Part I, Veterans Regulation 2 (a), as amended (38 U. S. C., ch. 12). He is not entitled to vocational counseling under Part VII, as amended, although he may upon his own request be provided such counseling under Part VIII, if he is eligible for education and training under that part. Even though vocational advisement may have been completed in his case prior to reduction of his disability rating to less than compensable degree, this fact does not make him eligible for induction into training under Part VII, as amended.

§ 21.722 *Appeals from advisement and guidance actions.* When the appropriate application of the advisement and guidance procedures results in a determination that a claimant is not eligible for the benefits under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), the claimant will be notified in writing of the determination and of his right to appeal to the Board of Veterans Appeals in accordance with the procedures established by that board.

§ 21.728 *Authority to provide transportation, meals and lodging for advisement and guidance purposes.* (a) Transportation at Government expense may be authorized and transportation, meals and lodging requests may be issued for the travel of an eligible claimant for benefits under Part VII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), when the manager or the chief, vocational rehabilitation and education division, has determined that such travel is necessary in the discharge of the Government's obligation in the case and the veteran is instructed to perform the travel for the following purposes: (1) To report to a field station or Veterans' Administration guidance center for determination of need for vocational rehabilitation and for advisement and guidance; (2) to return to the place from which travel was authorized when the Veterans' Administration is unable at that time to enter the veteran into training.

(b) Regional managers are authorized to provide the services of an attendant to accompany a claimant or beneficiary while such claimant or beneficiary is traveling for the purposes set forth in paragraph (a) of this section, when in the judgment of the chief, vocational rehabilitation and education division, such services are necessitated by the severity of the disability of the claimant or beneficiary.

(c) Transportation, meals, and lodging will not be authorized at Government expense for a claimant who is eligible only under Part VIII to report to a field station or Veterans' Administration guidance center for advisement and guidance under that part.

(d) If a veteran's eligibility under Part VII has been established, transportation expenses may be authorized at Government expense even though the veteran elects at the time of advisement to take training under Part VIII.

§ 21.730 *Advisement and guidance under Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12).* (a) Advisement and guidance services will be held to be necessary for a veteran entitled to education or training under Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12), who upon consideration of the facts and circumstances in his individual case is found to require the services in order to protect the interests of the Government or the veteran, provided the determination as to the necessity of the services is made by appropriate personnel of the Veterans' Administration through the application of the principles set forth in vocational rehabilitation and education procedures.

(b) Educational and vocational guidance will also be arranged for: (1) A veteran who voluntarily requests educational or vocational guidance and is preparing to enter training in the near future under the provisions of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), and desires assistance in making educational and vocational plans to accomplish his occupational adjustment.

(2) A veteran who voluntarily requests educational or vocational guidance and is in training under the provisions of Part VIII, Veterans' Regulation 1 (a), as amended (38 U. S. C., ch. 12), but desires educational or vocational guidance because of uncertainty as to whether his educational and vocational plans are in line with his aptitudes, abilities, and interests to the extent necessary to accomplish his occupational adjustment. (Educational guidance as referred to in this subparagraph is not that educational guidance which is offered by an institution to all students pursuing courses in such an institution.)

(c) The counseling techniques and methods used in providing educational and vocational guidance under Part VIII will be the same as those applied in the counseling of veterans under Part VII, as set forth in § 21.700. A determination as to whether there is need for training is not required to be made in the cases of veterans counseled under the provisions of Part VIII.

§ 21.735 *Advisement and guidance service on a fee basis*—(a) *Authorization.* The assistant administrator for vocational rehabilitation and education or his designate is authorized to negotiate and approve contracts with educational institutions, establishments, and other agencies for the purpose of providing services relating to the counseling of veterans who are eligible for such services under the provisions of Part VII and Part VIII, Veterans Regulation 1 (a), as amended (38 U. S. C., ch. 12), and to establish rates of payment which are just and reasonable for such services.

(b) *Establishment of Veterans' Administration guidance centers.* In each instance where such a contract is made, an organizational unit will be established at the location indicated in the contract where the services are to be performed and this unit with a chief in charge will for Veterans' Administration purposes be designated a Veterans' Administration guidance center.

(c) *Utilization of Veterans' Administration guidance centers.* In providing advisement and guidance services it will be the policy to utilize guidance centers to the greatest extent, consistent with the actual needs for such services, except for the counseling of seriously disabled veterans as identified in vocational rehabilitation and education procedures for whom such services will be provided at regional offices where specialists in the various disabilities will be available.

PART 36—SERVICEMEN'S READJUSTMENT ACT OF 1944

SUBPART A—TITLE III; LOAN GUARANTY

GUARANTY OF LOANS ON HOMES

GUARANTY OF LOANS ON FARMS AND FARM EQUIPMENT

GUARANTY OF LOANS ON PURCHASES OF BUSINESSES, ETC.

GUARANTY OR INSURANCE OF LOANS TO VETERANS

SUBPART A—TITLE III; LOAN GUARANTY

GUARANTY OF LOANS ON HOMES

AUTHORITY: §§ 36.4000 to 36.4051 issued under 58 Stat. 284; 38 U. S. C. 693.

§ 36.4000 *Definitions.* Wherever used in §§ 36.4000–36.4051, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Administrator" means the Administrator of Veterans' Affairs or any employee of the Veterans' Administration designated by him to act in his stead.

(b) "United States" used geographically means the several States, Territories and possessions, and the District of Columbia.

(c) "State" means any of the several States, Territories and possessions, and the District of Columbia.

(d) "Designated Agency" or "Agency" as used in respect to processing applications for guaranty of loans, means any Federal instrumentality designated by the Administrator (including Veterans' Administration if so designated) to certify whether an application meets the requirements of the act and regulations, and recommend whether the application should be approved if the applicant is found eligible.

(e) "Federal Agency" as used with respect to agencies making, guaranteeing or insuring primary loans, means any Executive Department, or administrative agency or unit of the United States Government (including a corporation essentially a part of the Executive Branch) at any time authorized by law to make, guarantee or insure such loans.

(f) "Guaranty" means the obligation of the United States of America assumed by virtue of the guaranty by the Administrator as provided in Title III of the Servicemen's Readjustment Act of 1944 (58 Stat. 284; 38 U. S. C. 693), and subject to the limitations and conditions thereof and of these regulations. The subject of the guaranty is that portion of an eligible loan procured by an eligible veteran which may be subject to being guaranteed as provided in said Title III, as determined by the Administrator upon application in accordance with §§ 36.4000–36.4051.

(g) "Mortgage" means an applicable type of security instrument commonly used or legally available to secure loans or the unpaid portion of the purchase price of real or personal property in a State, District, Territory, or possession of the United States of America in which the property is situated. It includes, for example, deeds of trust, security deeds, escrow instruments, real estate mortgages, conditional sales agreements, chattel mortgages, etc.

(h) "Secondary" or "junior" loan means a loan which is secured by a lien or liens subordinate to any other lien or liens on the same property.

(i) "Guaranteed loan" means a loan unsecured, or secured by a primary lien, or where permissible under the act and these regulations, a secondary lien, which loan is guaranteed in whole or in part by the Administrator as evidenced by endorsement thereon; or by Loan Guarantee Certificate issued by the Administrator, and which shall have become effective as prescribed by these regulations; or by such other legal evidence as may be provided by the Administrator.

(j) "Home" and "residential property" means any dwelling consisting of not more than four family units, or any combination dwelling and business property, the primary use of which is occupation by the veteran as his home.

(k) (1) "Reasonable normal value" is the price the property would ordinarily bring or the transaction would ordinarily cost in a contract between a willing and well informed buyer and a willing and well informed seller, both acting free from necessity and under circumstances not affected by economic or other conditions of an impermanent character.

(2) The purpose and intent are (i) to assure that the price to be paid represents a fair and reasonably permanent value in the real property to be acquired, (ii) to give, so far as the real estate is concerned, the basis for a fair but not unreasonable risk on the part of the United States Government when executing its guarantee, (iii) to assure that the appraisal shall be founded upon true and reasonably permanent values.

(3) Each valuation shall be justified, inter alia, (i) by the history of values and prices for this and similar properties, (ii) by the future resale possibilities as indicated by trends in the immediate locality and (iii) by the most probable and reasonably assured long term future economic and real estate conditions, national and local, as they will affect properties similar to and competitive with that under appraisal.

(4) "Reasonable normal value" is not necessarily "fair market value" nor "fair market price" in the usual legal sense of those terms, nor is it necessarily the same as "value for mortgage purposes."

(l) "Property" and "lot" as used in section 501 of the act refer to an interest in realty defined in this section, and subject to the conditions therein.

(1) An interest in realty may be a fee simple estate, or certain other estates indicated in subparagraphs (1) to (6) (including an estate for years) eligible as securities for guaranteed loans. But in any event the estate shall be one limited to end at a date more than 14 years after the ultimate maturity date of the loan, or when the fee simple title shall vest in the lessee; except that, if it is a leasehold that terminates earlier, it shall nevertheless be acceptable if lessee has the irrevocable right to renew for a term ending more than 14 years after the ultimate maturity date of the loan or until the fee simple title shall vest in lessee: *Provided,* The mortgagee obtains a mortgage lien of the required dignity upon such option right or anticipated reversion or remainder in fee.

(2) A life estate or other estate of uncertain duration is excluded, unless the remainder interests are also encumbered by lien of the same dignity to secure the same debt.

(3) A remainder interest in realty shall be eligible as security for a mortgage loan only in the event that all the owners of intervening immediate or remainder interests lawfully can and do (i) join in the mortgage in such manner as to subject all such intervening estates to the lien; or (ii) execute and deliver a lease or other proper conveyance to the owner of the ultimate remainder in fee simple in such manner as to assure his legal right to possession and enjoyment until the vesting of his ultimate remainder interest.

(4) If other than a fee simple estate or estate for years with minimum duration

as stated in subparagraph (1) of this paragraph, is offered as security full information may be submitted to the Administrator before taking application from the veteran. The Administration shall determine the eligibility of any such estate.

(5) The existence of any of the following will not require denial of the guaranty; hence will not require special submission:

(i) Outstanding easements for public utilities, party walls, driveways, and similar purposes;

(ii) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(iii) Slight encroachments by adjoining improvements;

(iv) Outstanding water, oil, gas or other mineral, or timber rights, which do not materially impair the value for residential purposes, or which are customarily waived by prudent lenders in the community: *Provided, however,* That if there is outstanding any legal right to quarry, mine or drill within 400 feet of the encumbered building the application for guaranty may be denied for that reason unless upon consideration of all the facts the Administrator determines otherwise. Such determination at the option of the lender or borrower may be obtained upon a special submission of all the facts prior to taking application for guaranty.

(6) A mortgage on an undivided interest in realty shall not be acceptable unless all co-tenants of the veteran join in the mortgage, and unless such joinder has the legal effect of creating a lien on the property such as is otherwise required. In such case it shall not be required that the co-tenants join in, endorse, or otherwise become personally liable on the veteran's indebtedness. Notwithstanding such joinder in the mortgage by the co-tenants the value of the security for purpose of guaranty shall be determined with respect to the individual interest of the veteran only, and the guaranty will be limited to the proper proportion of that sum, irrespective of the actual amount of the loan.

(m) "Indebtedness" means the unpaid principal and accrued interest on the note, bond or other obligations, the subject of the guaranty, and includes also taxes, insurance premiums and any other items for which the debtor is liable under the terms of the mortgage, or other contract, including proper contractual or statutory trustee fees and attorney fees, if any.

(n) "Note" means a promissory note, a bond, or other instrument evidencing the debt and the debtor's promise to pay same.

(o) "Appraiser" means an individual or firm or corporation of recognized standing, approved in writing by the Administrator to appraise property. An applicant for designation as an approved appraiser shall show to the satisfaction of the Administrator that he is of good character and that his experience and information enable him to form sound opinions as to the reasonableness of the purchase price or cost of property to be appraised in the territory in which he expects to operate.

A list of appraisers, considered by the Administrator to be in good standing at the time these regulations become effective, may be approved.

(p) "Certificate of title" means a written and signed opinion or statement as to title by a qualified member of the bar of, or by a title company authorized to do such business in, the jurisdication in which the mortgaged property is situated; or at the option of borrower and lender a title insurance or guaranty contract by a corporation authorized to engage in such business in the State wherein the property is situated; or appropriate evidence of title in the proposed encumbrancer pursuant to a Torrens or other similar title registration statute.

(q) "Credit report" means the report submitted by any credit reporting agency of at least five years' experience with facilities for national coverage, approved by the Administrator, or any other form of report acceptable to the Administrator for the purpose of determining the applicant's credit standing.

(r) "Eligible veteran" means a veteran who:

(1) Served in the active military or naval service of the United States on or after September 16, 1940, and before the officially declared termination of World War II.

(2) Shall have been discharged or released from active service under conditions other than dishonorable, either

(i) After active service of ninety days or more, or

(ii) Because of injury or disability incurred in service in line of duty, irrespective of the length of service; and

(3) Applies for the benefits of this title within two years after separation from the military or naval forces, or within two years after the officially declared termination of World War II, whichever is later. In no event, however, may an application be filed later than five years after such termination of such war.

(s) "Eligible lenders" are persons, firms, association, corporations, and "governmental agencies and corporations, either State or Federal." (Section 500 (c))

(t) "Creditor" means the payee, or any subsequent holder of the "indebtedness" and includes a mortgagee.

(u) "Debtor" means the maker of the note, or obligor in any other obligation, or any other person who is, or becomes, liable thereon, by reason of a contract of assumption or otherwise.

(v) "Interest" means the compensation fixed by law, or by the parties to a contract, for the use or detention of, or forbearance with respect to money, irrespective of the name applied to such compensation.

§ 36.4001 *Miscellaneous.* Throughout §§ 36.4000–36.4051, unless the context otherwise requires:

(a) The singular includes the plural;

(b) The masculine includes the feminine and neuter;

(c) Person includes corporations, partnerships and associations;

(d) Month means calendar month, i. e., the period beginning on a certain date in one month and ending at midnight on the preceding date of the next month;

(e) "The act" or "the statute" means the Servicemen's Readjustment Act of 1944, ch. 268, 78th Congress, 2d Session (Public Law No. 346), 58 Stat. 284; 38 U. S. C. 693;

(f) Title III means Title III of the act.

Loans Eligible for Guaranty

§ 36.4002 *Eligible loans.* Real or personal property encumbered to secure a loan guaranteed pursuant to Title III of the act shall be situated within the United States.

§ 36.4003 *Purchase or construction.* Section 501 (a) of the act provides for granting to an eligible veteran "the guaranty of a loan to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by him to be occupied as his home". The application therefor "may be approved by the Administrator", if he finds that:

(a) The proceeds of such loan will be used to pay for such property * * * (including construction cost);

(b) The contemplated terms of payment of any mortgage loan bear a proper relation to the veteran's present and anticipated income and expenses;

(c) The property is suitable for dwelling purposes;

(d) The purchase price or the construction cost, plus the value of the lot, does not exceed the reasonable normal value of the entire property as determined by proper appraisal; and,

(e) The loan appears practicable.

§ 36.4004 *Repairs, etc.* (a) Section 501 (b) provides: "Any application for the guaranty of a loan under this section for the purpose of making repairs, alterations, or improvements in, or paying delinquent indebtedness, taxes or special assessments on, residential property owned by the veteran and used by him as his home may be approved by the Administrator if he finds that the proceeds of such loan will be used for such purpose or purposes."

(b) For the purpose of section 501 (b):

(1) "Alterations or improvements", means any structural changes in or additions to the property, including heating and other equipment that become fixtures, or the replacement of either, or operations of a protective nature, which will increase the usefulness of the property as a home.

(2) "Repairs" means the work and material necessary to restore the building, or a fixture therein, to a condition that is useful and appropriate to the circumstances, the need therefor having arisen because of wear and tear, accident, or other cause.

(3) "Taxes" means general or special taxes assessed against the property.

(4) "Special assessments" means any charges for improvement purposes assessed against the property.

(5) "Delinquent indebtedness" means past due amounts of principal or interest (without giving effect to any accelera-

tion provisions) on an obligation secured in whole or in part by a lien or liens on property of an eligible veteran and occupied as his home. Each application to guarantee a loan purposed to pay delinquent indebtedness in excess of $500 shall be supported by an appraisal of the reasonable normal value of the residential property which secures the delinquent loan. The reasonable normal value of any property on account of which a loan for delinquent indebtedness is to be guaranteed may not be exceeded by the aggregate amount outstanding on the obligations which it secures, and in the case of property acquired within six months of the date of the filing of the application, by the cost of such property to the applicant.

(6) Satisfactory evidence will be required to establish that the proceeds of such loan will be used for one or more of the purposes stated in paragraph (b) of this section.

§ 36.4005 *Increase in value due to repairs, etc.* An application pursuant to section 501 (b) for the guaranty of a loan for repairs, alterations, or improvements of the property, must show that the amount of the loan will bear a proper relation to the value of the property, and that the repairs, alterations or improvements will enhance such value to a reasonable degree.

§ 36.4006 *Prior liens.* The existence of a lien or liens on the property in respect to which a guaranty of a loan is sought pursuant to section 501 (b) will not necessarily require a denial of the application for guaranty; but full consideration will be given to the amount, rate of interest, and maturity dates of the primary loan in determining whether a suitable relation will exist between the veteran's obligation and probable available income.

§ 36.4007 *First liens required.* Except as provided in section 505 of the act, loans for the purpose of purchasing or constructing homes, and in respect to which any guaranty is sought, shall be secured by a first lien on such property; but the existence of tax or special assessment prior liens will not disqualify security which is adequate and otherwise acceptable.

§ 36.4008 *Mortgages required.* (a) Each loan guaranteed in whole or in part by the Administrator shall be secured by a mortgage except that when the principal amount of a loan to be guaranteed does not exceed $500 and the lender does not require a mortgage, the Administrator may nevertheless guarantee such loan provided it complies otherwise with the act and these regulations (as to procedure see § 36.4024 (e)).

(b) The law of the State where the contract is made determines the capacity of the parties to contract. Similarly the law of the State wherein the real estate is situated determines the capacity of mortgagor to encumber and of the mortgagee to hold the legal rights resulting from encumbrance. The act does not modify such law of the State. The guaranty by the Administrator will be available only in the event that under the applicable State law the contract between the borrower and lender is binding on both, and the mortgage has the legal effect intended. This paragraph will be applicable particularly in cases involving minors, "persons of unsound mind," and persons under other legal disability by reason of the law of the State. It will be applicable also in cases involving mortgage or other loans which any guardian, conservator, or other fiduciary seeks to make, or obtain; and to a guaranty thereof for which application is submitted.

(c) *Type of loan and mortgage.* (1) Except as otherwise provided in paragraph (a) of this section each loan guaranteed under the provisions of Title III must be evidenced by a note or notes secured by appropriate security instrument or instruments ("mortgage legally sufficient in the jurisdiction in which the property to be encumbered is situated.")

(2) A term loan, which is in accord with applicable State or Federal law, and regulations, if any, may be eligible for guaranty if the amount of the loan to be guaranteed plus the unpaid amount of all obligations secured by liens superior to the lien securing the proposed loan does not exceed two-thirds of the reasonable normal value of the property encumbered to secure the loan and if the ultimate maturity date of the mortgage indebtedness so secured, and to be guaranteed, is not more than five years from the date of the note. Such superior liens shall not be mortgage liens, except when the guaranty is issued pursuant to sections 501 (b) or 505 of the act.

(3) Except as provided in subparagraph (2) of this paragraph the loan shall be amortized. The obligation to be amortized may, and except for the first year shall, require such periodical payments of stated sums as will in accordance with standard amortization practice result in payment of the entire principal and interest within not more than 20 years from the date of the loan, or the date of assumption by the veteran, whichever is later. At the request of the mortgagor the payments during the first year shall be less than the amount required thereafter, by the sum representing the interest charge on the guaranteed part of the loan, and which interest charge the Administrator will pay at the end of that year.

§ 36.4009 *Transfer of title.* The conveyance of, or other transfer of title to the property after the creation of a lien thereon to secure the veteran's debt, which is guaranteed in whole or in part by the Administrator, shall not terminate or otherwise affect the contract of guaranty, unless (a) the creditor by express agreement for that purpose releases or otherwise discharges the veteran from personal liability thereon; or (b) by indulgence of, or by agreement with, the veteran's immediate or remote grantee contrary to §§ 36.4000–36.4051, and without the consent of the Administrator the creditor so alters the contract made by the veteran with the lender as to cause discharge of the veteran by operation of law.

§ 36.4010 *Obligation of guarantor.* To the extent prescribed the obligation of the United States is that of a guarantor, not an indemnitor.

§ 36.4011 *Contract provisions.* Subject to the provisions of the act and §§ 36.4000–36.4051, the contract between the lender and borrower, may contain such provisions as they may agree upon and which are reasonable and customary in the locality where the property is situated.

§ 36.4012 *Repayment provisions.* (a) If the loan be an amortized loan the lender and borrower may contract for such periodical payments at monthly or other intervals but not less frequently than annually.

(b) If the mortgagor consents the mortgage may provide that each monthly or other periodical payment shall include in addition to the proper amount to be credited to principal and interest a proportionate part of the estimated amounts required annually for all taxes, ground rents if any, special assessments if any, and fire and other hazard insurance premiums. Such provisions may direct the method of crediting the additional amounts included in the periodical payments for the purposes stated in this paragraph.

(c) The method may be by crediting the note with the amounts so received and debiting same with disbursements by the creditor for such purposes; or by crediting and debiting a separate "trust account", or otherwise as the debtor and creditor agree. Unless otherwise provided by the parties, all periodical payments made by the debtor on the obligation shall be applied to the following items in the order set forth:

(1) Taxes, special assessments, fire and other hazard insurance premiums, and ground rents (allocated among such items as the creditor elects);

(2) Interest on the mortgage debt; and

(3) Principal of the mortgage debt.

§ 36.4013 *Prepayments.* (a) When the debt is to be amortized the note or other evidence thereof, or the mortgage securing same, shall contain appropriate provisions granting any person liable for such debt, the right to pay at any time the entire unpaid balance or any part thereof. Unless otherwise agreed all such prepayments shall be credited to the unpaid principal balance of the loan as of the due date of the next installment. No premiums shall be charged for any partial or entire prepayment.

(b) Any person liable shall be entitled to prepay a term loan, or any part thereof, upon not less than one month's notice. The note or mortgage shall so provide.

(c) Any prepayment shall be applied in the manner and to the items directed by the person making the prepayment.

§ 36.4014 *Pro rata decrease of guaranty.* The amount of the guaranty shall decrease pro rata with any decrease in the amount of the unpaid principal of the loan, prior to the date the claim is submitted.

§ 36.4015 *Insurance coverage required.* (a) Buildings the value of which enter into the appraisal forming the basis for the loan guaranteed shall be insured

against fire, and other hazards against which it is customary in the community to insure and in amount at least equal to the amount by which the loan exceeds the value of the encumbered land plus that of the improvements included in the appraisal but which are not subject to the hazards insured against: *Provided*, That upon a satisfactory showing at the time of application for guaranty that (1) it is impossible or impracticable to obtain such insurance because of location, prohibitive cost, or other good reason; (2) prudent lenders in such community customarily do not require such insurance, or some portion thereof, (amount or hazard) and (3) the lender submitting the application is willing to make the loan without insurance coverage on one or more of the buildings, or without certain coverage, or in a reduced amount, and subject to the provisions of paragraphs (b) and (c) of this section; the Administrator may at the time of approving the application waive all or part of such insurance requirements, subject to the provisions of said paragraphs (b) and (c) of this section. No waiver will be granted on the basis of premium cost in any case wherein the premium cost on an annual basis does not exceed $5.00 per $1000 of insurance against the hazard of fire, or $10.00 per $1000 for fire and all other hazards covered by the insurance. The procuring of insurance of the amount and coverage stated in the approved application shall constitute conclusive evidence of waiver by the Administrator of insurance in excess of the amount stated in or in connection with the application and also all hazards not mentioned therein as hazards to be covered.

The creditor shall require that there be maintained in force such insurance of the coverage stated in the approved application in an amount not less than the amount stated or the amount of the unpaid indebtedness whichever is the lesser.

In the event insurance becomes unavailable the fact shall be reported to the Administrator for determination whether waiver shall be granted or loan declared in default.

(b) For the sole purpose of determining the amount payable upon a claim under the guaranty after an uninsured loss (partial or total) has been sustained, the unpaid balance of the loan (except as provided in paragraph (c) of this section) will be deemed to have been reduced by an amount equal to the amount of the uninsured loss, but in no event below an amount equal to the value of the land and other property remaining and subject to the mortgage.

(c) There shall be no reduction of the amount of the guaranty as provided in paragraph (b) of this section by reason of an uninsured loss which is uninsured (as to hazard or amount) by reason of a waiver by the Administrator as provided in paragraph (a) of this section.

(d) All insurance effected on the mortgaged property shall contain appropriate provisions for payment to the creditor, (or trustee, or other appropriate person for the benefit of the creditor), of any loss payable thereunder. If by reason of the creditor's failure to require such loss payable provision in the insurance policy payment is not made to the mortgagee the liability on the guaranty nevertheless shall be reduced as provided in paragraph (b) of this section with respect to an uninsured loss, except to the extent that the liability under the policy was discharged by restoring the damaged property, by the insurer, or out of payments thereunder to the insured, or otherwise. No waiver pursuant to paragraph (a) of this section shall modify this paragraph.

(e) Upon the creditor (or trustee or other person) collecting the proceeds of any insurance contract, or other sum from any source by reason of loss of or damage to the mortgaged property, he shall be obligated to account for same, by applying it on the indebtedness, or by restoring the property to the extent the expenditure of such proceeds will permit. As to any portion of such proceeds the mortgagee is not entitled to retain for credit on such indebtedness or by reason of other legal right, he shall hold and be obligated to pay over the same as trustee for the United States and for the debtor, as their respective interest may appear.

(f) Nothing in §§ 36.4000–36.4051 shall operate to prevent the veteran from procuring acceptable insurance through any authorized insurance agent or broker he selects. In all cases the insurance carrier shall be one licensed to do such business in the State wherein the property is situated.

§ 36.4016 *Loan charges.* (a) In the case of a purchase of real or personal property by the veteran and a guaranty pursuant to the act and §§ 36.4000–36.4051 of an indebtedness representing part of the purchase price, there may be charged to the veteran and included in said note amounts actually paid or incurred by the seller (mortgagee) for such expenses and charges as are chargeable to such purchaser in accord with local custom, if the purchaser so agrees, such as fees for appraisals, credit and character report on the veteran, surveys, fees of purchaser's (not seller) attorney, recording fees for recording the deed and the mortgage only, premiums on fire and other hazard insurance that may be required in accordance with §§ 36.4000–36.4051.

(b) In the case of a loan to the veteran, charges in accord with local custom, such as fees for appraisals, credit and character report, surveys, abstract, or the search, curative work and instruments, attorney fees, fees for tax certificates showing all taxes paid, premiums on fire and other hazard insurance that may be required in accordance with these regulations, revenue stamps, recording fees, etc., all limited to amounts actually paid or incurred by the lender, may be charged to the borrower and withheld from the gross amount of the loan.

(c) Any unreasonable charges shall be ground for denying an application for guaranty. No brokerage or other charges shall be made against the veteran for obtaining any loan guaranty under this title.

§ 36.4017 *Interest.* (a) The rate of interest chargeable on a loan guaranteed fully or in part, shall not exceed 4 per centum per annum on unpaid principal balances. Interest may be computed in accordance with standard amortization practices.

(b) The rate of interest on a secondary loan which is guaranteed pursuant to section 505 of the act may exceed by not more than 1% per annum the rate charged on the principal loan, but in no event shall the rate on the secondary loan exceed 4% per annum.

§ 36.4018 *Advances.* (a) Nothing herein shall prevent the creditor from making advances for the benefit of the mortgagor to pay taxes, assessments, and insurance premiums as they become due, and the cost of the emergency repairs needed to protect the property. The amount guaranteed by the Administrator shall be increased pro rata with all such increases in the unpaid principal balance of the loan: *Provided:* (1) That the annual interest rate on all advances shall not exceed 4 per centum per annum; (2) that the terms of repayment shall not extend the date of the amortization of the loan and (3) that the amount of the guaranty shall in no event exceed the original amount thereof, nor exceed the percentage of the indebtedness originally guaranteed.

(b) In the case of any advance made by a creditor to a debtor, the creditor with the consent of the debtor, may apply any and all payments made by the debtor for a period of twelve months to the liquidation of the advance without considering the original loan in default. This shall not be construed to extend the period of indulgence contemplated by §§ 36.4034 and 36.4035.

§ 36.4019 *Construction loans.* Under certain circumstances loans relating to new construction may be guaranteed pursuant to the Act. (See § 36.4032)

Guaranty by the Administrator

§ 36.4020 *Limits.* In no event will the aggregate obligations of the United States as guarantor under Title III exceed $2,000 in respect to one veteran, whether there be one or several loans, and whether some are obtained for the acquisition of a home, others for a farm, and others for business, or equipment, or other purposes. Repayment of a loan or loans in whole or in part, or transfer of the encumbered property does not modify or enlarge such limitation. The guaranty shall not at any time exceed 50 per centum of the aggregate of the indebtedness for any of the purposes specified in sections 501, 502 and 503 of the act.

§ 36.4021 *Second loan under section 505 (a).* Section 505 (a) of the act provides that when the principal loan for any of the purposes stated in sections 501, 502 or 503 is "approved by a Federal agency to be made or guaranteed or insured by it pursuant to applicable law and regulations, and the veteran is in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof," the Administrator may guarantee the full amount of the second loan, *Provided:*

(a) It does not exceed 20 per centum of the purchase price or cost.

(b) The amount guaranteed together with all other guarantees under Title III for the same veteran does not exceed $2,000.

(c) The loan conforms to all other applicable requirements of §§ 36.4000–36.4051.

§ 36.4022 *Two or more eligible veterans or borrowers.* (a) In the absence of a statement to the contrary, an application signed by two or more eligible veterans shall be conclusively presumed to be an application by each for the guaranty of an equal proportionate part of the entire amount to be guaranteed: *Provided, however,* That if husband and wife execute the application, both being eligible veterans, it will be conclusively presumed in the absence of a contrary statement in the application that it is an application for guaranty on behalf of the husband only. Unless the amount of guaranty then available to the husband is insufficient to meet the requirements of the case for guaranty of a proper amount under §§ 36.4000–36.4051 and the terms of the application; in which event the deficiency may be charged against the amount available to the wife, unless she has in the application or otherwise (before approval) stated in writing her unwillingness to be so charged.

(b) The Administrator will not require a wife to sign an application made by her husband. If she also is an eligible veteran and desires to exercise her right as such to obtain a guaranty, a separate application by her will be required. Signature of her husband to indicate his pro forma joinder will be required only when the wife is resident of, or the application is signed in, or the property to be encumbered is situated in, a State under the laws of which such contract cannot be legally executed by a married woman alone as in the case of an unmarried woman.

§ 36.4023 *Maximum liability where there are two or more veterans.* (a) For the purpose of determining the maximum amount of the potential liability of the United States under a guaranty incident to an obligation on which two or more eligible veterans who applied for the guaranty are liable, the obligation will be deemed a several, and not a joint, obligation of the respective applicants who were charged with the guaranty or a part thereof notwithstanding that as among the debtors or any of them, and as between them, or any of them, and the creditor, the obligation is in fact and law a joint obligation or a joint and several obligation.

(b) In no event will the amount of any veteran's debt thereunder be deemed to exceed for guaranty purposes the amount for which such veteran is legally liable to the holder of the obligation, nor the value of the interest of the veteran in the property. If more than one of the obligors is an eligible veteran and application by him or them is granted, the maximum aggregate amount of the guaranty will be the sum of the amounts available to each applying veteran but in no event will the aggregate of the guarantees for more than one veteran exceed 50 per centum of the total loan except as provided under section 505 of the Act.

(c) For the purpose of this § 36.4023 the wife of a principal obligor shall not be counted unless (1) she is legally liable on the obligation under the law of jurisdiction where she executed it, and (2) if she is a veteran she be properly chargeable with a part or all of the guaranty as provided in § 36.4022.

§ 36.4024 *Veteran's application.* (a) To apply for a guaranteed loan the veteran and the prospective lender shall complete and sign in duplicate Finance Form 1802, Application for a Home Loan Guaranty. The lender shall inquire of the nearest office of the Veterans' Administration whether the proposed borrower is eligible and the amount of his available guaranty. This information will be supplied on Finance Form 1800, Certification of Eligibility. The Administrator will also supply the name and address of an approved appraiser to be used in the course of processing the application.

(b) Before forwarding the executed application the prospective lender shall procure a credit report on the borrower and an appraisal of the property by the appraiser designated. The appraiser's report shall include photographs necessary to reflect generally existing conditions, and in any event those specified in the application, or appraisal forms prescribed. They may be snapshots. (See instructions for appraisers.)

(c) If the proposed loan is for alteration or improvement purposes the appraisal report shall reflect an examination of the building contract, the plans and specifications, and include appropriate data sufficient to afford a basis for estimating the increased value of the property to result from completion of such improvements.

(d) In every case the appraiser's report shall indicate the basis, by survey or otherwise, of identifying the property appraised as that to be encumbered to secure the proposed loan.

(e) If (1) the loan does not exceed $500, (2) the lender does not require a mortgage, and (3) the loan otherwise complies with §§ 36.4000–36.4051, the provisions of paragraphs (b), (c), and (d) of this section; paragraphs (d), (e), and (h) of § 36.4025; paragraphs (a), (c), and (d) of § 36.4030; subparagraphs (2) and (3) of paragraph (a) of § 36.4031; and paragraphs (c) and (e) of § 36.4032 shall be inapplicable to such loan and any guaranty thereof.

§ 36.4025 *Papers required.* The prospective lender shall submit to the agency the following papers:

(a) Certification of eligibility.

(b) Loan guaranty certificate.

(c) Original application for guaranty signed by prospective lender and borrower.

(d) The credit report.

(e) The appraisal report.

(f) Copy of the "conditional sales agreement" if the loan is to be predicated on such an instrument.

(g) Proposed loan closing statement of the estimated amounts to be disbursed by the lender for the account of the borrower.

(h) Unless stated in the mortgage, or otherwise in the papers submitted, a statement of the kinds and amounts of insurance to be required to protect the mortgagor, the lender and the Administrator against loss by fire and other hazards, and the estimated premium cost thereof. (See § 36.4015)

(i) When applicable, the original and copy (both signed) of Form No. 1862, Application to Amend Loan Guaranty Certificate, (see § 36.4031 (c) and (d)).

§ 36.4026 *Recommendation for approval of guaranty.* The Agency shall review the papers to determine whether it will recommend approval of the application for guaranty. Thereupon the Agency shall forward all the papers to the appropriate office of the Administrator with recommendation that (a) the Administrator approve the application, or (b) he disapprove it. If disapproval is recommended the reasons therefor shall be stated in writing at the time the papers are forwarded. A recommendation that the application be approved, shall be appropriately endorsed on the original of the application.

§ 36.4027 *Administrator's action on application.* (a) Upon receipt of the papers from the Agency, the Administrator will determine whether to approve the application. If disapproved he shall return to the proposed lender all papers except the original application for guaranty and shall state that the application for guaranty has been denied and the reasons therefor. He shall send a copy of the letter to the veteran and the Agency. Upon denial any expenses incurred by the lender or the borrower shall be borne by them or either of them as they shall have agreed.

(b) (1) The veteran and the proposed lender, or either, may appeal to the Administrator for review of a denial of the application.

(2) Such appeal may be by letter, or on any prescribed form, and mailed or delivered to central office of the Veterans' Administration within one month after receipt of notice of denial.

(c) (1) If for any reason the loan transaction is not concluded and the same or another lender thereafter wishes to consider making a loan on the same security described in the original application, a supplemental application, if the same lender, or a new application if a different lender, may be submitted. If accompanying it is a statement by the borrower and lender that the condition of the security is substantially the same as when the appraisal report was made, the supplemental or new application may be approved without a new appraisal, if the supplemental or new application shall have been received by the Administrator within three months from the date of the appraisal report.

(2) Without reference to the time limit stated in subparagraph (1) of this paragraph, a copy of the appraisal report will be supplied without cost to a prospective new lender or to the original proposed lender at the currently prescribed price for a copy.

§ 36.4028 *Execution and form of guaranty.* (a) If the Administrator approves

the application he shall notify the Agency and the veteran thereof. For the purpose of evidencing the contract of guaranty, he shall execute a loan guaranty certificate, to become effective upon the conditions therein stated. It shall be in substantially the form following:

NOTE: Forms printed in the FEDERAL REGISTER are for information only and do not follow the exact format prescribed by the issuing agency.

UNITED STATES OF AMERICA

LOAN GUARANTY CERTIFICATE

Issued by Veterans' Administration

State _____
(Where property is located)

Number L. H._____
(To be filled in by Veterans' Administration)

_____
Lender
(Exactly as appears as payee of note)

_____
(Address)

_____
Borrower (Veteran)
(Exactly as to be signed on note and mortgage)

_____
(Address)

I

A. This certificate shall become effective when the requirements of the statute and regulations have been complied with and the acts certified in Part III hereof have been accomplished in compliance with said requirements.

B. When it becomes effective as hereinabove prescribed, this certificate shall obligate the United States of America to pay to the legal holder of the "note" described on the reverse hereof upon his duly filing claim therefor:—

1. All or such portion of the maximum amount hereby guaranteed as becomes payable upon the conditions, at the times stated in, and in accordance with the provisions of, the Servicemen's Readjustment Act of 1944, (38 U. S. Code 693; 58 Stat. 284), and the regulations issued pursuant thereto which are in effect on the date of this Certificate. In no event will the obligation under this Certificate exceed $2,000. Subject to the foregoing this guaranty on this date is for $_____, being _____ per centum of the face amount of said note, and in no event will it exceed said sum or percentage.

2. At the expiration of one year from the date of the "note", an amount equal to the interest for one year at the contract rate on that portion of the indebtedness ("note") originally guaranteed hereby, such payment to be credited on the indebtedness as prescribed by said regulations.

C. Executed on behalf of the United States of America by the Administrator of Veterans' Affairs, through the undersigned authorized agent on this date, to become effective in the manner hereinabove prescribed.

Date _____

ADMINISTRATOR OF VETERANS' AFFAIRS

By: _____
(Authorized Agent)

At: _____
(Post Office)

II

DESCRIPTION OF PROPERTY TO BE "MORTGAGED"

Type lot and block number, if any, or field notes and any other proper language to complete legal description. Include description of personal property if any.

Premises identified as:

_____
(House Number and Street)

_____
(City, Town, Village)

_____
(County, Parish)

_____
(State, District, Territory)

and further described as:

(Continue legal description if necessary in the space below)

III

CERTIFICATION BY BORROWER AND LENDER

A. We hereby warrant that (1) the undersigned borrower named on the reverse hereof executed the note, the principal sum of which is $_____; (2) it is dated the _____ day of _____ 19____; (3) borrower(s) and mortgagor(s) delivered it together with the "mortgage" (as defined in the regulations) bearing the same date, and executed to secure payment of said note; (4) said note and mortgage are those approved by the Administrator of Veterans' Affairs upon application of the undersigned pursuant to which this loan guaranty certificate was issued; and (5) the amount stated above has been paid to, or according to the directions of, the undersigned borrower(s).

B. The undersigned lender warrants that (1) the same "mortgage", duly executed and acknowledged; was properly filed for record on the _____ day of _____ 19____; at _____ -- M.; and was given file No. _____ by the Recorder; (2) that it covers the property described on the reverse hereof, which is the same property described, or otherwise identified, or referred to, in the above-mentioned application for guaranty, and in this loan guaranty certificate; and (3) that no lien superior to said "mortgage" has intervened since the date of said application.

(If a corporation)

_____
(Secretary)

Mr.
Mrs.
Miss _____
(Lender(s))

By: _____
Title—(President, vice president, etc.)

Mr.
Mrs.
Miss _____

Mr.
Mrs.
Miss _____
(Borrower(s))

_____
(Sign in ink on these lines)

If the note is unsecured but is eligible for guaranty under the regulations, references to "mortgage" in paragraphs "A" and "B" above are inapplicable. (See § 36.4008 (a).)

(b) The word principal as used in the Loan Guaranty Certificate and the certification on the reverse thereof means the amount of money actually disbursed to or for the account of the borrower.

(c) The certification by borrower and lender in paragraph III B (3) of the Loan Guaranty Certificate as printed in § 36.4028 shall be deemed to be correct, nothwithstanding that the guaranteed loan is secured by a second lien, if, but only if, such is permissible under the regulations and the facts of the case, and if the application for guaranty indicates that the loan is to be secured by a second lien.

§ 36.4029 *Disposition of papers.* The original application for guaranty will be retained in the files of the Veterans' Administration. The loan guaranty certificate and all other papers will be forwarded to the proposed lender with instructions as to closing the loan in a manner to make the guaranty effective.

§ 36.4030 *Loan procedure after approval of guaranty.* Upon receipt of the papers from the Administrator, the lender shall:

(a) Satisfy himself by title certificate, as defined in these regulations, as to the title to the property to be encumbered, *Provided,* That in the case of applications pursuant to section 501 (b) of the act an affidavit by the veteran may be accepted in lieu of such certificate if the amount of the loan does not exceed $500.

(b) Cause all necessary instruments to be properly signed and those to be recorded properly witnessed, acknowledged or proved so as to entitle them to recordation.

(c) Disburse all funds in substantial accord with the proposed loan closing statement submitted with the application. (See § 36.4025 (g))

(d) File with the proper public official for record the mortgage and any other appropriate instrument which under the law of the State is required or permitted to be recorded.

§ 36.4031 *Guaranty when effective.* (a) Within two months after closing the loan and filing the proper instrument for record, the lender shall complete and forward to the Administrator (using prescribed form, if available) a properly signed report of closing the loan stating that:

(1) The disbursement of the amount named in such report as the principal of the loan has been completed by the lender, which amount may be not more than 3% in excess of the amount of the proposed loan as stated in the original application for guaranty, without complying with the procedure stated in paragraphs (c) and (d) of this section.

(2) Such disbursements were as estimated on the loan closing statement submitted with the application, except as otherwise stated on the reverse side of the report of closing loan. (See §§ 36.4016 (a) and 36.4025 (g))

(3) The note and the mortgage (or other security instrument) were properly executed stating the date, and the latter "was duly acknowledged, witnessed, or proved, to that it was legally eligible for recording; the date and hour and county in which it was properly filed for record; and the filing number thereof."

(4) The note was dated (stating the date thereon), and signed by the "debtor", and the rate of interest provided therein.

(5) The loan guaranty certificate (stating its L-number) was completed, and appropriately signed by the lender and the borrower as therein provided.

(b) If lender is a corporation its corporate seal shall be impressed on such report.

(c) If the transaction to be closed is essentially the same as indicated in the original application except that:

(1) The amount of the loan actually to be made is more than 103% of the amount stated in the application, or

(2) Personal property to be acquired differs from that described but is for the same use or purpose and substantially similar in kind, quality and value, Form 1862, Application to Amend Loan Guaranty Certificate, will be completed and signed in duplicate.

(d) The lender will forward the original and copy of Form 1862, Application to Amend Loan Guaranty Certificate, to the "Agency", which will recommend approval or disapproval and forward both to the Veterans' Administration office which issued the Loan Guaranty Certificate. Such office will determine whether to approve the Application to Amend Loan Guaranty Certificate. Such determination will be based on the original application, the evidence submitted in or with the original application, the application to amend, the recommendation of the Agency, and such other evidence, if any, as it considers necessary. Notice of action will be given as in the case of original applications. If approved such approval will be appropriately indicated on the original, and such original, duly executed by the Veterans' Administration will be forwarded to the lender. It may be attached to the original Loan Guaranty Certificate to evidence amendment thereof as reflected by such "rider".

§ 36.4032 *Construction loans.* (a) Upon the submission to an agency of an application made pursuant to section 501 (a) or 505 (a) of the act for the guaranty of a loan for the construction of a dwelling on unimproved property owned by the veteran, or under section 501 (b) for construction involving alterations or improvements, the guaranty will be issued to become effective only upon completion of the construction project, and upon fulfillment of the same requirements of this part as are applicable to the guaranty of loans for the acquisition of homes other than by construction.

(b) Notwithstanding the provisions of paragraph (a) hereof, the guaranty mentioned therein may become effective without the entire amount of the loan having been disbursed if:

(1) Complete disbursement is prevented, in the exercise of ordinary care, by reason of the filing of mechanic liens or other liens, or other controversy or threat of litigation, as to entitlement to any part of the proceeds of such loan; and

(2) There is paid to an Escrow Agent approved by the Administrator so much of such proceeds as have not been disbursed, or other arrangements satisfactory to the Administrator have been made for assuring the availability of such sums; and

(3) There is issued by the Administrator Form 1863, Approval of Escrow Certificate, which may be attached to the loan guaranty certificate.

(c) For construction loans the lender will follow the procedure provided in §§ 36.4024–36.4031 for the guaranty of loans for the purchase of residential property and in addition will furnish to the Agency:

(1) Complete plans and specifications for the proposed construction.

(2) An estimate, prepared by a qualified appraiser, of the fair market value of the property on which the improvements will be situated together with a separate estimate of the increased value of the property which will result from the improvements according to the plans and specifications. Such estimates of value are in addition to the appraiser's report of the "reasonable normal value".

(3) A copy of the agreement or agreements (which may be unsigned) on which the proceeds of the proposed loan will be disbursed.

(d) Upon the receipt of such papers the Agency will follow the procedure prescribed in § 36.4026 and submit same to the Administrator for action under §§ 36.4027 and 36.4028.

(e) Except where the construction shall have been inspected and approved and completion certified by a Federal Agency making or guaranteeing or insuring the principal loan on such property, as contemplated by section 505 (a) of the act, the Loan Guaranty Certificate shall become effective upon the condition, in addition to those set forth in § 36.4030, that there be supplied to the Administrator a statement by an appraiser on Form 1803 (a), Statement by Appraiser on Completion of New Construction,

(1) He has inspected the construction, repairs, alterations, or improvements.

(2) The same have been constructed and completed in substantial conformity with the contract, the plans and specifications (if any), and any authorized changes therein (if any), permitted by §§ 36.4000–36.4051, or, in those cases embraced in § 36.4024 (c) or § 36.4024 (e) there are no plans and specifications, within good building practices.

(3) The increased value of the property as completed and which will be encumbered is substantially in accord with his estimate.

(f) During the course of construction the Administrator shall be entitled at his expense, to cause such inspection of the construction work at such time or times as he may determine.

(g) Upon compliance with the requirements of this section and of §§ 36.4030 and 36.4031 relating to the guaranty becoming effective in other than construction loan cases, said Loan Guaranty Certificate shall become effective as originally executed (and subject to § 36.4031), or as amended pursuant to approval of application therefor on Form 1862, Application to Amend Loan Guaranty Certificate. (See § 36.4031 (c) and (d).)

(h) The borrower and lender may contract for the payment to the lender of a reasonable sum for the advance of funds during the construction and the supervision or inspection of the construction.

(i) Minor changes may be made in the plans and specifications or substitution of material of substantially equal quality or value, as the creditor, the debtor, and the builder (contractor) may agree if same are not of a major character and in the aggregate do not increase or decrease the cost more than five per centum of the contract price. This does not modify the provisions of § 36.4031. Changes or substitutions other than as herein stated must have the approval of the Administrator.

§ 36.4033 *Losses which are not guaranteed.* The guaranty shall not cover any loss sustained by the creditor as the result of:

(a) The acceptance by the mortgagee of a mortgage on any property, title to which is not merchantable;

(b) Failure of the mortgagee to procure a duly recorded lien of the dignity required by §§ 36.4000–36.4051;

(c) Failure of the mortgagee to comply with § 36.4015 with respect to insurance, or

(d) A tax sale pursuant to execution, or otherwise as provided by law, occasioned by nonpayment of taxes accruing against the mortgaged property after the date of the mortgage if mortgagee fails to give notice to the Administrator of the delinquent taxes at least one month before such sale.

(e) A release by the creditor of the lien on any of the real or personal property securing the guaranteed loan, or any part thereof, unless the Administrator consents in writing. Such consent may be granted if the debt is appropriately reduced or on such other terms as the Administrator may determine: *Provided, however,* That if the land is sought by a public authority for highway or other purposes, consent is hereby given for the creditor to release without consideration or for such consideration as he deems proper and without reference to the Administrator, the creditor's lien on land without any buildings thereon if the land so released does not exceed five percent of the acreage encumbered and does not exceed $200 in value. The same consent is hereby given when the release, easement grant, or other instrument is sought by a public or private agency, or person, for the purpose of pipe line, telephone, telegraph or electric transmission lines: *Provided, however,* That when such releases, or grants by the lender for any one or more of the purposes stated in this paragraph, or otherwise, with or without specific consent by the Administrator, shall have decreased the security as much as five percent in acreage, or $200 in value, no further releases shall be executed, without consent of the Administrator. If release of lien is executed contrary to the provisions of §§ 36.4000–36.4051 the amount of the guaranty will be reduced proportionately in the same manner as if the value of the released property were applied as a credit on the unpaid balance of the loan. The provisions of this paragraph will not be construed to affect the guaranty in the event of any grant of title or easement that leaves unaffected the lien on the property affected thereby; or

(f) Sale by reason of foreclosure of a superior lien if the holder of the guaranteed loan secured by a subordinate lien has knowledge of such foreclosure sale as much as 10 days prior thereto and fails to notify the Administrator of the time and place thereof.

(g) The exercise of a right of reverter for breach of restrictive covenants.

Claims under a guaranty

§ 36.4034 *Default.* (a) In the event of default, not cured, continuing three months on an amortized loan or one month on a term loan the creditor may elect to assert claim under the guaranty, and give notice thereof to the Administrator.

(b) If any default occasioned by failure seasonably to pay to the creditor entitled any amount of principal or interest due him under the contract (not cured) shall have persisted as long as six months the holder of the indebtedness shall give notice thereof to the Administrator notwithstanding the failure results from payments on advances as provided in § 36.4018, or from any indulgences of the debtor as provided in § 36.4041.

(c) (1) The notice shall state the loan guaranty number if available. If not available other identifying data shall be included, such as date and amount of original obligation, location of Veterans' Administration office that issued the guaranty and the property encumbered.

(2) In all cases the notice shall state the name and last known address of the debtor, of the veteran, and of the creditor, and the date and manner of default, and amount past due. If he desires, the creditor may also state his views as to any indulgence that should be extended.

(3) The notice to the Administrator shall be mailed by registered mail or personally delivered in exchange for a written receipt within one month after the expiration of said 6 months' period.

§ 36.4035 *Claim on notice of default.* (a) In the notice of default or separately, then, or later, the creditor may make claim under the guaranty.

(b) Then or thereafter the creditor may also give notice of his intention to foreclose the lien or liens securing the indebtedness.

(c) The Administrator may approve the creditor's request, if any, to postpone action to press his claim against the mortgagor, or the property, such postponement, with the consent of the Administrator, shall not operate to void or diminish the ultimate liability under the guaranty. In no event shall indulgence or postponement of action authorized by §§ 36.4000–36.4051 impair any right of the creditor to thereafter proceed within the applicable statute of limitations period as if there had been no indulgence or postponement.

§ 36.4036 *Legal action.* (a) The creditor shall not begin action in court or give notice of sale under power of sale, or repossess the property, real or personal, or otherwise take steps to terminate the debtor's rights in the property until the expiration of thirty (30) days after delivery to the Administrator of the notice of intention to foreclose, repossess or otherwise to so terminate the debtor's rights. Notwithstanding paragraph (a) of § 36.4034 such notice may be given at any time after a default.

(b) (1) If the circumstances require immediate action to protect the interest of the creditor or the Administrator, the Administrator may waive the requirement for prior notice if notice of the action taken is immediately given.

(2) Without limiting the foregoing, the existence of conditions justifying the appointment of a receiver for the property shall be sufficient excuse for beginning suit without prior notice to the Administrator if within ten days after commencement of the suit or action, plaintiff gives the Administrator notice thereof.

§ 36.4037 *Notice of suit and subsequent sale.* (a) Within ten days after beginning suit or causing notice of sale without suit to be given, the creditor shall notify the Administrator thereof by registered mail or personal delivery in exchange for written receipt. It shall state whether the foreclosure will be by proceeding in court, or under a power of sale; the style and number of the suit, if any, and the name and location of the court in which pending.

(b) The creditor shall give written notice to the Administrator by registered mail (or delivery) of any foreclosure sale, judicial, or under a power of sale; or of any proposed termination of the rights of any vendee or his immediate or remote grantee (assignee) pursuant to any power or option in a sales contract, or in any other instrument affecting the property which constitutes any security for the obligation guaranteed. Such notice shall be given so that it is received at least thirty days before such sale or other proposed action. It shall state the date, hour and place thereof. The Administrator may bid thereat on the same terms as the lender or other bidders, and may exercise any right the debtor could exercise by virtue of the contract, or any statute, or otherwise. This section is applicable whether the suit, or the sale, or termination, occur before or after payment of the guaranty.

§ 36.4038 *Death of veteran.* (a) In the event the creditor has knowledge of the death of the veteran, or of any owner of an interest in the encumbered property, or the death of any other person liable on the indebtedness which is guaranteed in whole or in part, the creditor shall take such steps, if any, as are legally necessary, and reasonably available, in the jurisdiction where the encumbered property is situated, to avoid loss of the lien, or impairment thereof, or of all or part of the proceeds of any sale of the property as a result of, or incident to, such death, or of any probate proceedings thereby occasioned in said jurisdiction.

(b) In addition to protecting the lien rights as required by paragraph (a) of this section, the creditor at his discretion may proceed in probate, or otherwise, as may be permissible and feasible, in any jurisdiction where administration proceedings are pending or properly may be instituted, or other appropriate legal action taken against assets or persons, to assert any rights, by means of any remedies, therein available to a similarly situated creditor or the decedent.

(c) Upon direction of the Administrator and his designation of an accessible attorney for the purpose, and making appropriate provisions for advancing or paying the costs and expenses of the proceeding, the creditor shall proceed as provided in paragraph (b) of this section: *Provided, however,* That in any case the Administrator may, at his option, proceed immediately in respect to protecting the lien, or asserting claim as contemplated by paragraph (b) of this section, or as to both remedies. If the Administrator takes action, it may be in his name or the name of the creditor as the Administrator may elect and as may be appropriate under applicable law. If action is taken by the Administrator he shall seasonably notify the creditor thereof.

(d) Nothing in this section shall impair any right of set-off or other right or remedy of the Administrator.

§ 36.4039 *Death or insolvency of creditor.* (a) Immediately upon the death of the creditor and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a "trust", or "deposit", or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been accredited on the note shall, nevertheless, be treated as a set-off and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: *Provided, however,* That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at his option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This section shall be applicable whether the estate of the deceased creditor is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of creditor;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the creditor, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the creditor's property; or, in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraphs (a) or (b) of this section interest on the note and on the credit balance of the "deposits" mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid "advances," if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a).

§ 36.4040 *Filing claim under guaranty.* Claim under the guaranty may be made

on Form 1864, Claim under the Guaranty. Subject to the limitation that the total amount payable under the guaranty shall in no event exceed the original amount thereof, the amount payable under the guaranty shall be the percentage of the indebtedness originally guaranteed applied to the indebtedness (as defined in § 36.4000 (m)), computed as of the date of the claim, and reduced by any payments theretofore made by the United States pursuant to the guaranty.

§ 36.4041 *Options available to Administrator.* Upon receipt of claim under the guaranty, or notice of intention to foreclose, the Administrator shall have the following options:

(a) Pay to the creditor not later than one month after receipt of notice of any default, as a partial payment of any actual or potential claim under the guaranty, the amount of principal, interest, taxes, advances, or other items in default; and in consideration of such payment the lender shall be deemed to have agreed to refrain from giving effect to any acceleration provisions by reason of defaults prior to the date of notice of default theretofore given: *Provided, however,* That unless the creditor consents, the Administrator may exercise this option once only, and in an amount not exceeding an amount equivalent to the aggregate of principal and interest payable in one year, or not exceeding ten per centum of the original amount of the guaranty, whichever sum is less.

(b) Pay the creditor within one month after receipt of claim the full amount payable under the guaranty without requiring foreclosure, or personal action.

(c) Pay to the creditor promptly after receipt of claim any amount agreed upon, not exceeding the amount due under the guaranty; and notify him to institute appropriate foreclosure proceedings, with, or without, legal action to reduce the debt to judgment, against all or any of the parties liable thereon, and whose names are stated in such notice to the creditor.

(d) If the creditor does not begin appropriate action within two months after receipt of notice to institute action as provided in paragraph (c) above, the Administrator shall be entitled to begin and prosecute the same to completion in the name of the creditor, or of the Administrator on behalf of the United States, as may be appropriate under applicable laws and rules of procedure: *Provided, however,* That in such event the Administrator shall pay (in advance if required under the practice in the jurisdiction) all court costs, and other expenses, and provide the legal services required.

§ 36.4042 *Refinancing and extension of guaranty.* (a) (1) In addition to the options available under §§ 36.4038 or 36.-4041, the Administrator, upon receiving (i) notice of intention to foreclose by judicial proceedings or otherwise or to repossess the property, real or personal, or otherwise to terminate the debtor's rights therein, or (ii) a claim for a guaranty, shall be entitled to obtain a refinancing of the indebtedness by delivering notice of intention so to do to the creditor prior to the date upon which otherwise it would be proper for the creditor to proceed. Upon receipt from the Administrator of such notice of intention to obtain a refinancing the creditor's right to proceed shall be suspended for sixty (60) days from the date stated by the Administrator in such notice as the date on which the Administrator received the creditor's notice or claim.

(2) If within the sixty day period prescribed in subparagraph (1) of this paragraph, an offer is received by the creditor to pay, or to purchase the indebtedness at par and interest to date of closing, it shall be the duty of the creditor to forthwith accept such offer, to execute and deliver appropriate instruments without recourse, and to refrain from further proceedings, or repossession, or termination of the debtor's rights.

(3) When (i) a claim for guaranty is filed, or (ii) when a refinancing occurs and an offer is made as contemplated by subparagraphs (1) and (2) of this paragraph, the creditor shall not be entitled to treat payments theretofore made by the debtor, or another, as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(4) Nothing herein shall be construed to require a creditor to lend money for such refinancing, nor to affect guarantees issued prior to the effective date of this amendment.

(b) If refinanced in any manner the Administrator may continue in effect the guaranty granted with respect to the previous loan in such manner as to cover the loan which effected the refinancing.

(c) The Administrator in appropriate cases shall be entitled to exercise any redemption rights of a debtor, or a creditor, in connection with the loan guaranteed, or property rights arising out of, or incident to, such loan.

§ 36.4043 *Subrogation.* (a) Any amounts paid to the creditor by the Administrator pursuant to the guaranty shall constitute a debt due to the United States by the veteran on whose application the guaranty was made; and by his estate upon his death. The Administrator is subrogated to the contract and the lien rights of the creditor to the extent of such payments, but junior to the creditor's rights as against the debtor or the encumbered property, until the creditor shall have received the full amount payable under his contract with the debtor. No partial or complete release by the creditor of the debtor or of the lien shall impair any rights of the Administrator, by virtue of the lien or otherwise.

(b) The creditor, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town, or state, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the state where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

§ 36.4044 *Future action against mortgagor.* In addition to the amount, if any, collected from the proceeds of the encumbered property by reason of the right of subrogation, the United States will collect from the veteran, or his estate, by set-off against any amounts otherwise payable to the veteran or his estate; or in any other lawful manner, any sums disbursed by the United States on account of the claim pursuant to the guaranty.

§ 36.4045 *Suit by Administrator.* (a) Whenever pursuant to §§ 36.4000–36.4051, the Administrator institutes, or causes to be instituted by the creditor, or otherwise, any suit in equity; action at law; or probate proceedings or the filing of a claim in such; or other legal or equitable proceedings of any character, or any sale, in court or pursuant to any power of sale, the person or persons properly instituting the same (including the Administrator), shall be entitled to recoup from any proceeds realized therefrom any expenses reasonably incurred, including trustee fees, court costs, and attorney fee paid (or the reasonable value of the services of the trustee and of the attorney, if performed by salaried person or persons, or by the party himself, when proper).

(b) The net proceeds, after setting off such items that may properly be recouped, shall be credited to the indebtedness, or otherwise as may be proper under the facts.

(c) In determining the propriety of recoupment and the amount thereof consideration shall be given to any provisions in the note or mortgage relating to such items, and any amounts actually realized pursuant thereto.

§ 36.4046 *Creditor's records and reports required.* (a) The creditor shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof. Any creditor who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such creditor; not on the debtor, or the United States.

(b) On any delinquent loan the creditor shall report annually on the anniversary of the earliest unremedied default any amount received or disbursed, the unpaid balance of principal and accrued interest and any other items chargeable; and the nature of any de-

faults not already reported. He shall include such additional information, if reasonably necessary and obtainable, which may, from time to time be requested by the Administrator.

(c) A proposed lender may be required to submit evidence satisfactory to the Administrator of his equipment for maintenance of adequate records on, and his ability to service, loans if guaranteed pursuant to the provisions of the act and §§ 36.4000–36.4051.

§ 36.4047 *Failure to supply information.* Failure to supply any available information required by §§ 36.4000–36.4051 within two months after request therefor will entitle the Administrator to obtain such information otherwise, and the expense of so obtaining it, plus ten dollars to cover estimated overhead expenses, shall be chargeable to the creditor who failed to comply with such request.

§ 36.4048 *Notice to Administrator.* Any notice required by §§ 36.4000–36.4051 to be given the Administrator shall be sufficient if in writing, and delivered at, or mailed to, the Veterans' Administration office at which the application for guaranty was approved or to any changed address of which the creditor has been given notice or, at the option of the creditor, to the central office of the Veterans' Administration, Washington 25, D. C. If mailed the notice shall be by registered mail when so provided by §§ 36.4000–36.4051.

§ 36.4049 *Right to inspect books.* The Administrator has the right to inspect, at a reasonable time and place the papers and records pertaining to the loan and guaranty. If permission to inspect is declined the Administrator may enforce the right by subpoena under the provisions of Title III, Public No. 844, 74th Congress, 49 Stat. 2031–35, 38 U. S. C. 131, or in any other lawful manner.

§ 36.4050 *Forms, construction to be placed on reference to.* All references in the regulations to Form 1800, Certification of Eligibility, or to other form numbers shall be construed to include any revision of the same forms, identified by the same, or by different numbers.

§ 36.4051 *Disqualified lenders and bidders.* Except under unusual circumstances and upon prior approval by the Administrator an application for guaranty of a loan will not be approved if the lender is known to be an employee of the Veterans' Administration or of the Agency; and without such approval, an employee of either may not bid at a foreclosure sale of the security for a guaranteed loan.

GUARANTY OF LOANS ON FARMS AND FARM EQUIPMENT

AUTHORITY: §§ 36.4100 to 36.4151 issued under 58 Stat. 284; 38 U. S. C. 693.

§ 36.4100 *Definitions.* Wherever used in §§ 36.4100–36.4151, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Administrator" means the Administrator of Veterans' Affairs or any employee of the Veterans' Administration designated by him to act in his stead.

(b) "United States" used geographically means the several States, Territories and possessions, and the District of Columbia.

(c) "State" means any of the several States, Territories and possessions, and the District of Columbia.

(d) "Designated agency" or "agency" as used in respect to processing applications for guaranty of loans, means any Federal instrumentality designated by the Administrator (including Veterans' Administration if so designated) to certify whether an application meets the requirements of the act and regulations, and recommend whether the application should be approved if the applicant is found eligible.

(e) "Federal agency" as used with respect to agencies making, guaranteeing, or insuring primary loans, means any Executive Department, or administrative agency or unit of the United States Government (including a corporation essentially a part of the Executive Branch) at any time authorized by law to make, guarantee or insure such loans.

(f) "Guaranty" means the obligation of the United States of America assumed by virtue of the guaranty by the Administrator as provided in Title III of the Servicemen's Readjustment Act of 1944 (58 Stat. 284; 38 U. S. C. 693), and subject to the limitations and conditions thereof and of §§ 36.4100–36.4151. The subject of the guaranty is that portion of an eligible loan procured by an eligible veteran which may be subject to being guaranteed as provided in said Title III, as determined by the Administrator upon application in accordance with these regulations.

(g) "Mortgage" means an applicable type of security instrument commonly used or legally available to secure loans or the unpaid portion of the purchase price of real or personal property in a State, District, Territory or possession of the United States of America in which the property is situated. It includes, for example, deeds of trust, security deeds, escrow instruments, real estate mortgages, conditional sales agreements, chattel mortgages.

(h) "Secondary" or "junior" loan means a loan which is secured by a lien or liens subordinate to any other lien or liens on the same property.

(i) "Guaranteed loan" means a loan unsecured, or secured by a primary lien, or where permissible under the act and these regulations, a secondary lien, which loan is guaranteed in whole or in part by the Administrator as evidenced by endorsement thereon; or by a Loan Guaranty Certificate issued by the Administrator, and which shall have become effective as prescribed by §§ 36.4100–36.4151; or by such other legal evidence as may be provided by the Administrator.

(j) "Farming operations" are those which involve actual production and marketing of crops, livestock, livestock products, or other agricultural commodities, and which constitute the applicant's major occupation. No acreage limit will be established but size will be a factor in determining practicability.

(k) "Reasonable normal value" is the price the property would ordinarily bring or the transaction would ordinarily cost in a contract between a willing and well informed buyer and a willing and well informed seller, both acting free from necessity and under circumstances not affected by economic or other conditions of an impermanent character.

(l) (1) "Real property" as used in section 502 of the act refers to an interest in realty defined in this section and subject to the conditions therein. It includes buildings and other improvements that are deemed to be real property under the law of the State where situated.

(i) An interest in realty may be a fee simple estate, or certain other estates indicated in subdivisions (i) to (vi), inclusive, of this subparagraph including an estate for years, eligible as security for guaranteed loans. But in any event the estate shall be one limited to end at a date more than 14 years after the ultimate maturity date of the loan, or when the fee simple title shall vest in the lessee; except that, if it is a leasehold that terminates earlier, it shall nevertheless be acceptable if lessee has the irrevocable right to renew for a term ending more than 14 years after the ultimate maturity date of the loan or until the fee simple title shall vest in lessee; provided the mortgagee obtains a mortgage lien of the required dignity upon such option right or anticipated reversion or remainder in fee.

(ii) A life estate or other estate of uncertain duration is excluded, unless the remainder interests are also encumbered by liens of the same dignity to secure the same debt.

(iii) A remainder interest in realty shall be eligible as security for a guaranteed loan only in the event that all the owners of intervening immediate or remainder interests lawfully can and do (*a*) join in the mortgage in such manner as to subject all such intervening estates to the lien; or (*b*) execute and deliver a lease or other proper conveyance to the owner of the ultimate remainder in fee simple in such manner as to assure his legal right to possession and enjoyment until the vesting of his ultimate remainder interest.

(iv) If other than a fee simple estate or estate for years with minimum duration as stated in subdivision (i) of this subparagraph is offered as security, full information may be submitted to the Administrator before taking application from the veteran. The Administrator shall determine the eligibility of any such estate.

(v) The existence of any of the following will not require denial of the guaranty, hence will not require special submission:

(*a*) Outstanding easements for public utilities, party walls, driveways, and similar purposes;

(*b*) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(c) Slight encroachments by adjoining improvements;

(d) Outstanding water, oil, gas or other mineral rights which do not and will not materially impair the value for farming purposes, and which are customarily waived by prudent lenders in the community: *Provided, however,* That if there is outstanding any legal rights to quarry, mine, or drill within 400 feet of the principal residence or barn on the encumbered farm, the application for guaranty may be denied for that reason, unless upon consideration of all the facts, the Administrator determines otherwise. Such determination at the option of the lender or borrower may be obtained upon a special submission of all the facts prior to taking application for guaranty.

(vi) A mortgage on an undivided interest in realty shall not be acceptable unless all co-tenants of the veteran join in the mortgage and unless such joinder has the legal effect of creating a lien on the property such as is otherwise required. In such cases it shall not be required that the co-tenants join in, endorse, or otherwise become personally liable on the veteran's indebtedness. Notwithstanding such joinder in the mortgage by the co-tenants the value of the security for purpose of guaranty shall be determined with respect to the individual interest of the veteran only, and the guaranty will be limited to the proper proportion of that sum, irrespective of the actual amount of the loan.

(2) "Personal property" means tangible or intangible property other than "real property" as defined in subparagraph (1) of this paragraph if such property is to be used in farming operations conducted by the veteran as prescribed in these regulations. It includes property which by reason of the contract of the seller and purchaser remains personalty notwithstanding that except for such contract it would become a "fixture", or otherwise a part of the realty.

(3) Livestock, equipment, machinery or implements for the purchase price of, or loan upon, which a guaranty under section 502 is applied for shall be those to be used directly in farm operations to be conducted by the veteran on farm land in which he holds any estate mentioned in paragraph (l) (1) (i)–(vi), inclusive, of this section, or any farm land to the use and occupancy of which he is entitled for a sufficient period to make a suitable crop. The latter right shall be evidenced by a lease, or by an appropriate letter from the landlord, evidencing the veteran's right to use of the land.

(m) "Indebtedness" means the unpaid principal and accrued interest on the note, bond or other obligations, the subject of the guaranty, and includes also taxes, insurance premiums and any other items for which the debtor is liable under the terms of the mortgage or other contract, including proper contractual or statutory trustee fees and attorney fees, if any.

(n) "Note" means a promissory note, a bond, or other instrument evidencing the debt and the debtor's promise to pay same.

(o) "Appraiser" means an individual or firm or corporation of recognized standing, approved in writing by the Administrator to appraise property. An applicant for designation as an approved appraiser shall show to the satisfaction of the Administrator that he is of good character and that his experience and information enable him to form sound opinions as to the reasonableness of the purchase price or cost of property to be appraised in the territory in which he expects to operate. He shall also be experienced in determining the earning capacity of farms.

A list of appraisers, considered by the Administrator to be in good standing at the time §§ 36.4100–36.4151 become effective, may be approved.

(p) "Certificate of title" means with respect to real property a written and signed opinion or statement as to title by a qualified member of the bar of, or by a title company authorized to do such business in, the jurisdiction in which the mortgaged property is situated; or at the option of borrower and lender a title insurance or guaranty contract by a corporation authorized to engage in such business in the State wherein the property is situated; or appropriate evidence of title in the proposed encumbrancer pursuant to a Torrens or other similar title registration statute.

(q) "Credit report" means the report submitted by any credit reporting agency of at least five years' experience with facilities for national coverage, approved by the Administrator, or any other form of report acceptable to the Administrator for the purpose of determining the applicant's credit standing. (See §§ 36.4124 and 36.4125 before ordering credit report.)

(r) "Eligible veteran" means a veteran who:

(1) Served in the active military or naval service of the United States on or after September 16, 1940, and before the officially declared termination of World War II;

(2) Shall have been discharged or released from active service under conditions other than dishonorable either (i) after active service of ninety days or more, or (ii) because of injury or disability incurred in service in line of duty, irrespective of length of service; and

(3) Applies for the benefits of this Title within two years after separation from the military or naval forces, or within two years after the officially declared termination of World War II, whichever is later. In no event, however, may an application be filed later than five years after such termination of such war.

(s) "Eligible lenders" are persons, firms, association, corporation and governmental agencies and corporations, either State or Federal. (Section 500 (c).)

(t) "Creditor" means the payee, or any subsequent holder of the indebtedness, and includes a mortgagee.

(u) "Debtor" means the maker of the note, or obligor in any other obligation, or any other person who is, or becomes, liable thereon, by reason of a contract of assumption or otherwise.

(v) "Conducted by a veteran" means personally directed and operated by a veteran on the site, with or without hired labor; not solely operated by a tenant or an employee who does not receive supervision and direction by the veteran.

(w) "Interest" means the compensation fixed by law, or by the parties to a contract, for the use or detention of, or forbearance with respect to money, irrespective of the name applied to such compensation.

§ 36.4101 *Miscellaneous.* Throughout §§ 36.4100–36.4151 unless the context otherwise requires; (a) the singular includes the plural; (b) the masculine includes the feminine and neuter; (c) person includes corporations, partnerships and associations; (d) month means calendar month, i. e., the period beginning on a certain date in one month and ending at midnight the preceding date of the next month; (e) "the act" or "the statute" means the Servicemen's Readjustment Act of 1944, ch. 268, 78th Congress, 2d Session (Public No. 346), 58 Stat. 284; 38 U. S. C. 693; (f) Title III means Title III of the act.

Loans Eligible for Guaranty

§ 36.4102 *Eligible loans.* (a) The real or personal property encumbered to secure a loan guarantee pursuant to Title III of the act shall be situated within the United States as defined in § 36.4100 (b).

(b) (1) The veteran must possess such actual knowledge of farming and be of such character and industry as to indicate that because of his ability and experience relevant to farming he likely will be able to succeed in the conduct of farming operations. Agricultural courses in schools of recognized standing and other training will be given due weight in evaluating experience.

(2) It must appear that the veteran's financial situation will be such that he likely will be able to carry on the farming enterprise successfully. The amount of "readjustment allowance", if any, payable pursuant to Title V of the act (38 U. S. C. 696, 696d) shall be considered in this connection.

(c) A farming operation must be of sufficient size and productivity to enable an operator of average ability, operating under normal circumstances as to yields and prices, to derive sufficient subsistence and income from it to meet necessary living and operating expenses and debt obligations. The area of the farm unit and its composition (i. e., crop acres, pasture, woodland, etc.) must be carefully related to and reconciled with the type of operations which would be undertaken by a typical operator. Improvement and farm facilities must be appropriate, or feasibly adjustable, to operations to be undertaken.

§ 36.4103 *Agricultural loans.* Section 502 of the act provides for granting to an eligible veteran "the guaranty of a loan to be used in purchasing any land, building, livestock, equipment, machinery, or implements, or in repairing, altering, or improving any buildings or equipment, to be used in farming operations conducted by the applicant" if the Administrator of Veterans' Affairs finds that:

(a) The proceeds of such loan will be used in payment for real or personal property purchased or to be purchased

by the veteran, or for repairing, altering or improving any buildings or equipment, to be used in bona fide farming operations conducted by him;

(b) Such property will be useful in and reasonably necessary for efficiently conducting such operation;

(c) The ability and experience of the veteran, and the nature of the proposed farming operations to be conducted by him are such that there is a reasonable likelihood that such operations will be successful; and

(d) The purchase price paid or to be paid by the veteran for such property does not exceed the reasonable normal value thereof as determined by proper appraisal.

§ 36.4104 *Repairs, improvements, taxes, delinquent indebtedness, etc.* (a) "Alterations" in respect to a farm, means any structural changes in or additions to an existing building, or equipment, on or to be used on the farm, including heating and other equipment that become fixtures; or operations of a protective nature, which increase the usefulness of such buildings or equipment.

(b) "Improvements" means construction of new buildings (other than the main residence), new or improved fencing, installation or extension of water supply, or of electricity for domestic or other purposes on the farm, sewers and other waste disposal systems on the farm, silos, barns, and other structures thereon.

(c) "Repairs" means the work and material necessary to restore the building or fixture therein, or the equipment, to a condition that is useful and appropriate to the circumstances, the need therefor having arisen because of wear and tear, accident or other cause.

(d) "Taxes" means general or special taxes assessed against the real property.

(e) "Special assessments" means any charges for improvement purposes assessed against the real property.

(f) "Delinquent indebtedness" means past due amounts of principal or interest (and without giving effect to any acceleration provisions) on an obligation secured in whole or in part by lien or liens on property of an eligible veteran and occupied as his home. (See § 36.4105 (a).) Each application to guarantee a loan purposed to pay delinquent indebtedness in excess of $500 shall be supported by an appraisal of the reasonable normal value of the residential porperty which secures the delinquent loan. The reasonable normal value of any property on account of which a loan for delinquent indebtedness is to be guaranteed may not be exceeded by the aggregate amount outstanding on the obligations which it secures, and in the case of property acquired within six months of the date of the filing of the application, by the cost of such property to the applicant.

(g) "Purchased or to be purchased" as used in section 502 (1) of the act refers to real or personal property to be used for the purpose stated in section 502 of the act, whether the property is purchased contemporaneously with such application, or is to be purchased subsequent thereto. But as to any loan for a future purchase the guaranty will become effective only from the time the purchase is consummated.

§ 36.4105 *Loan for delinquent indebtedness and taxes on farm home.* (a) Under appropriate circumstances a guaranty pursuant to section 501 (b) of the act may be obtained if the loan is "for the purpose of * * * paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him as his home * * *". Section 501 (b) is applicable to a farm if it is the veteran's home. (See § 36.4104 (d), (e), (f).)

(b) Guaranty of a loan for alterations, improvements, or repairs (as each is defined and limited in § 36.4104) for the farm may be granted if otherwise proper, notwithstanding that such loan is not secured by a first lien.

(c) Satisfactory evidence will be required to establish that:

(1) The proceeds of the loan will be used for an appropriate purpose as prescribed in paragraphs (a) and (b) of this section.

(2) The amount of the loan will bear a proper relation to the value and earning power of the property, and the alterations, improvements or repairs of the real or personal property will enhance its value to a reasonable degree.

§ 36.4106 *Prior liens*—(a) *Real property.* The existence of a lien or liens on the real property in respect to which a guaranty of a loan is sought pursuant to section 501 (b) will not necessarily require a denial of the application for guaranty; but full consideration will be given to the amount, rate of interest, and maturity dates of the primary loan in determining whether a suitable relation will exist between the veteran's obligation and probable available income.

(b) *Personal property.* Unless section 501 (b) of the act is applicable, or unless the circumstances are extraordinary, a loan which is to be secured by a lien on personalty shall be secured by a first lien thereon. (See §§ 36.4104 and 36.4105.)

§ 36.4107 *First liens required.* Except as provided in section 505 of the act, loans for the purpose of purchasing a farm with or without a residence thereon, and loans for constructing a residence thereon, and in respect to which any guaranty is sought, shall be secured by a first lien on the property, but the existence of tax or special assessment prior liens will not necessarily disqualify security which is adequate and otherwise acceptable.

§ 36.4108 *Mortgages required.* (a) (1) Each loan guaranteed in whole or in part by the Administrator shall be secured by a "mortgage" except that when the principal amount of a loan to be guaranteed does not exceed $500 and the lender does not require a mortgage, the Administrator may nevertheless guarantee such loan provided it complies otherwise with the act and §§ 36.4100–36.4151. (As to procedure see § 36.4124 (c) and (f).)

(2) If indebtedness of the veteran is not adequately secured by a lien on the entire interest in specific chattels or other personal property, but is secured by undivided interests therein, the requirements of § 36.4100 (l) (1) (vi) relating to undivided interests in realty shall be applicable to the interests in said chattels or other personal property.

(3) The "mortgage" shall include all intangible property rights which are incident to the encumbered property, real or personal.

(4) If the encumbered real or personal property is owned by a partnership all partners shall join in the encumbrance or their authorization to the person or persons executing the encumbrance shall be in writing in due form and properly acknowledged. The Veterans' Administration will not require that a partner other than the veteran become personally liable on the obligation.

(5) Increase derived from live-stock which is held as collateral is not required to be included in the lien, and when so included may be disposed of by agreement between creditor and debtor without advising the Administrator of such disposition.

(b) The law of the "State" where the contract is made determines the capacity of the parties to contract. Similarly the law of the "State" wherein the real-estate or personal property is situated determines the capacity of "mortgagor" to encumber and of the "mortgagee" to hold the legal rights resulting from encumbrance. The act does not modify such law of the "State". The guaranty by the Administrator will be available only in the event that under the applicable "State" law the contract between the borrower and lender is binding on both, and the "mortgage" has the legal effect intended. Paragraph (b) of this section will be applicable particularly in cases involving minors, "persons of unsound mind", and persons under other legal disability by reason of the law of the "State". It will be applicable also in cases involving "mortgage" or other loans which any guardian, conservator, or other fiduciary seeks to make, or obtain; and to a guaranty thereof for which application is submitted.

(c) *Type of loan and mortgage.* (1) Except as otherwise provided in paragraph (a) of this section each loan guaranteed under the provisions of Title III must be evidenced by a "note" or "notes" secured by appropriate security instrument or instruments ("mortgage legally sufficient in the jurisdiction in which the property to be encumbered is situated"), including a pledge or hypothecation when appropriate.

(2) A term loan, which is in accord with applicable State or Federal law, and regulations, if any, may be eligible for guaranty if the amount of the loan to be guaranteed plus the unpaid amount of all obligations secured by liens superior to the lien securing the proposed loan does not exceed two-thirds of the "reasonable normal value" of the property encumbered to secure the loan and if the ultimate maturity date of the "mortgage" indebtedness so secured, and to be guaranteed, is not more than five years from the date of the "note". Such superior liens shall not be "mortgage" liens except when the guaranty is issued pursuant to §§ 36.4105 and 36.4106.

(3) Except as provided in subparagraph (2) of this paragraph the loan shall be amortized. If the obligation to be amortized is secured by realty it may, and except for a period not in excess of the first three years shall, require periodical payments not less frequently than annually. The amounts so payable shall be substantially equal as to principal, or if the parties so agree, as to principal and interest. In any event they shall be such as will result in payment of the entire principal and interest within not more than 20 years from the date of the loan, or the date of assumption by the veteran, whichever is later. At the request of the mortgagor the payments for the first year shall be less than the amounts required in other years by the sum representing the interest charge on the guaranteed part of the loan, and which interest charge the Administrator will pay at the end of the first year. The mortgagor and mortgagee may agree that no payment on principal will be required during a period not extending beyond the first three years. The ultimate maturity, and the dates and amounts of periodical payments, shall be fixed so as to maintain until the ultimate maturity substantially the same ratio between the indebtedness and the value of the real and personal property encumbered to secure same, taking into consideration the fact that the useful life of portions of the real or personal property will have ended prior thereto.

§ 36.4109 *Transfer of title.* The conveyance of, or other transfer of title to the property after the creation of a lien thereon to secure the veteran's debt, which is guaranteed in whole or in part by the Administrator, shall not terminate or otherwise affect the contract of guaranty, unless (a) the "creditor" by express agreement for that purpose releases or otherwise discharges the veteran from personal liability thereon; or (b) by indulgence of, or by agreement with, the veteran's immediate or remote grantee or vendee contrary to §§ 36.4100–36.4151 and without the consent of the Administrator the creditor so alters the contract made by the veteran with the lender as to cause discharge of the veteran by operation of law.

§ 36.4110 *Obligation of guarantor.* To the extent prescribed the obligation of the United States is that of a guarantor, not an indemnitor.

§ 36.4111 *Contract provisions.* Subject to the provisions of the act and §§ 36.4100–36.4151, the contract between the lender and borrower may contain such provisions as they agree upon and which are reasonable and customary in the locality where the property is situated.

§ 36.4112 *Repayment provisions.* (a) If the loan be an amortized loan the lender and borrower may contract for periodical payments at monthly or other intervals, but not less frequently than annually, subject to the provisions of § 36.4108 (c) (3).

(b) If the mortgagor consents the mortgage may provide that such monthly or other periodical payment shall include in addition to the proper amount to be credited to the principal and interest a proportionate part of the estimated amounts required annually for all taxes, rents, special assessments, if any, and fire and other hazard insurance premiums. Such provisions may direct the method of crediting the additional amounts included in the periodical payments for the purposes stated in this paragraph.

(c) The method may be by crediting the note with the amounts so received and debiting same with disbursements by the creditor for such purposes; or by crediting and debiting a separate "trust account", or otherwise as the debtor and creditor agree. Unless otherwise provided by the parties, all periodical payments made by the debtor on the obligation shall be applied to the following items in the order set forth:

(1) Taxes, special assessments, fire and other hazard insurance premiums and rents (allocated among such items as the creditor elects);

(2) Interest on the mortgage debt; and

(3) Principal of the mortgage debt.

§ 36.4113 *Prepayments.* (a) When the debt is to be amortized the note or other evidence thereof, or the mortgage securing same, shall contain appropriate provisions granting any person liable for such debt, the right to pay at any time the entire unpaid balance or any part thereof. Unless otherwise agreed all such prepayments shall be credited to the unpaid principal balance of the loan as of the due date of the next instalment. No premium shall be charged for any partial or entire prepayment.

(b) Any person liable shall be entitled to prepay a term loan, or any part thereof, upon not less than one month's notice. The note or mortgage shall so provide.

(c) Any prepayment shall be applied in the manner and to the items directed by the person making the prepayment.

§ 36.4114 *Pro rata decrease of guaranty.* The amount of the guaranty shall decrease pro rata with any decrease in the amount of the unpaid principal of the loan, prior to the date the claim is submitted.

§ 36.4115 *Insurance coverage required.* (a) Buildings, the value of which enter into appraisal forming the basis for the loan guaranteed, shall be insured against fire, and other hazards against which it is customary in the community to insure, and in reasonable amount at least equal to the amount by which the loan exceeds the value of the encumbered land plus that of the improvements included in the appraisal but which are not subject to the hazards insured against: *Provided*, That upon a satisfactory showing at the time of the application for guaranty that (1) it is impossible or impracticable to obtain such insurance because of location, prohibitive cost, or other good reason; (2) prudent lenders in such community customarily do not require such insurance, or some portion thereof (amount or hazard), and (3) the lender submitting the application is willing to make the loan without insurance coverage on one or more of the buildings, or without certain coverage, or in a reduced amount, and subject to the provisions of paragraphs (b) and (c) of this section; the Administrator may at the time of approving the application waive all or part of such insurance requirements, subject to the provisions of said paragraphs (b) and (c) of this section. No waiver will be granted on the basis of premium cost in any case wherein the premium cost on an annual basis does not exceed $5.00 per $1000 of insurance against the hazard of fire, or $10.00 per $1000 for fire and all other hazards covered by the insurance. For loans on personalty insurance collectible in amount equal to the debt and against the hazards usually insured against, if reasonably available at reasonable cost, shall be required. The insurance coverage on personalty will be a factor in determining the practicability of the loan. The procuring of insurance of the amount and coverage stated in the approved application shall constitute conclusive evidence of waiver by the Administrator of insurance in excess of the amount stated in or in connection with the application and also all hazards and property not mentioned therein as hazards and property to be covered.

The creditor shall require that there be maintained in force such insurance of the coverage stated in the approved application in an amount not less than the amounted stated or the amount of the unpaid indebtedness whichever is the lesser.

In the event insurance becomes unavailable the fact shall be reported to the Administrator for determination whether waiver shall be granted or loan declared in default.

(b) For the sole purpose of determining the amount payable upon a claim under the guaranty after an uninsured loss (partial or total) has been sustained, the unpaid balance of the loan (except as provided in paragraph (c) of this section) will be deemed to have been reduced by an amount equal to the amount of the uninsured loss, but in no event below an amount equal to the value of the land and other property remaining and subject to the mortgage.

(c) There shall be no reduction of the amount of the guaranty as provided in paragraph (b) of this section by reason of an uninsured loss which is uninsured (as to hazard or amount) by reason of a waiver by the Administrator as provided in paragraph (a) of this section.

(d) All insurance effected on the mortgaged property shall contain appropriate provisions for payment to the "creditor," (or trustee, or other appropriate person for the benefit of the "creditor"), of any loss payable thereunder. If by reason of the "creditor's" failure to require such loss payable provision in the insurance policy, payment is not made to the "mortgagee" the liability on the guaranty nevertheless shall be reduced as provided in paragraph (b) of this section with respect to an uninsured loss, except to the extent that the liability under the policy was discharged by restoring the damaged property, by the insured, or out of payments thereunder to the insured, or otherwise. No waiver pursuant to

paragraph (a) of this section shall modify this paragraph.

(e) Upon the "creditor" (or trustee or other person) collecting the proceeds of any insurance contract, or other sum from any source by reason of loss of or damage to the "mortgaged" property, he shall be obligated to account for same, by applying it on the indebtedness, or by restoring the property to the extent the expenditure of such proceeds will permit. As to any portion of such proceeds the "mortgagee" is not entitled to retain for credit on such indebtedness or by reason of other legal right, he shall hold and be obligated to pay over the same as trustee for the United States and for the debtor, as their respective interests may appear.

(f) Nothing in these regulations shall operate to prevent the veteran from procuring acceptable insurance through any authorized insurance agent or broker he selects. In all cases the insurance carrier shall be one licensed to do such business in the State wherein the property is situated.

§ 36.4116 *Loan charges.* (a) In the case of a purchase of real or personal property by the veteran and a guaranty pursuant to the act and §§ 36.4100–36.4151 of an indebtedness representing part of the purchase price, there may be charged to the veteran and included in said note amounts actually paid or incurred by the seller ("mortgagee") for such expenses and charges as are chargeable to such purchaser in accord with local custom, if the purchaser so agrees, such as fees for appraisals, credit and character report on the veteran, surveys, fees of purchaser's (not seller's) attorney, recording fees for recording the deed and the "mortgage" only, premiums on fire and other hazard insurance that may be required in accordance with §§ 36.4100–36.4151.

(b) In the case of a loan to the veteran, charges in accord with local custom, such as fees for appraisals, credit and character report, surveys, abstract, or title search, curative work and instruments, attorney fees, fees for tax certificates showing all taxes paid, premiums on fire and other hazard insurance that may be required in accordance with §§ 36.4100–36.4151, revenue stamps, recording fees, etc., all limited to amounts actually paid or incurred by the lender, may be charged to the borrower and withheld from the gross amount of the loan.

(c) Any unreasonable charges shall be ground for denying an application for guaranty. No brokerage or other charges shall be made against the veteran for obtaining any loan guaranty under this title.

§ 36.4117 *Interest.* (a) The rate of interest chargeable on a loan guaranteed fully or in part, shall not exceed 4 per centum per annum on unpaid principal balances. Interest may be computed in accordance with standard amortization practices.

(b) The rate of interest on a secondary loan which is guaranteed pursuant to section 505 of the act may exceed by not more than 1% per annum the rate charged on the principal loan, but in no event shall the rate on the secondary loan exceed 4% per annum.

§ 36.4118 *Advances.* (a) Nothing herein shall prevent the creditor from making advances for the benefit of the mortgagor to pay taxes, assessments and insurance premiums as they become due, and the cost of emergency repairs needed to protect the property. The amount guaranteed by the Administrator shall be increased pro rata with all such increases in the unpaid principal balance of the loan: *Provided,* (1) That the annual interest rate on all advances shall not exceed 4 per centum per annum; (2) that the terms of repayment shall not extend the date of the amortization of the loan and (3) that the amount of the guaranty shall in no event exceed the original amount thereof, nor exceed the percentage of the indebtedness originally guaranteed.

(b) In the case of any advance made by a creditor to a debtor, the creditor with the consent of the debtor may apply any and all payments made by the debtor for a period of twelve months to the liquidation of the advance without considering the original loan in default. This shall not be construed to extend the period of indulgence contemplated by §§ 36.4134 and 36.4135.

§ 36.4119 *Construction loans.* Under certain circumstances loans relating to new construction may be guaranteed pursuant to the act. (See § 36.4132.)

Guaranty by the Administrator

§ 36.4120 *Limits.* In no event will the aggregate obligations of the United States as guarantor under Title III exceed $2,000 in respect to one veteran, whether there be one or several loans, and whether some are obtained for the acquisition of a home, others for a farm, and others for business, or equipment, or other purposes. Repayment of a loan or loans in whole or in part, or transfer of the encumbered property does not modify or enlarge such limitation. The guaranty shall not at any time exceed 50 per centum of the aggregate of the indebtedness for any of the purposes specified in sections 501, 502 and 503 of the act.

§ 36.4121 *Second loan under section 505 (a).* Section 505 (a) of the act provides that when the principal loan for any of the purposes stated in sections 501, 502 or 503 is "approved by a Federal agency to be made or guaranteed or insured by it pursuant to applicable law and regulations, and the veteran is in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof", the Administrator may guarantee the full amount of the second loan, *Provided:*

(a) It does not exceed 20 per centum of the purchase price or cost.

(b) The amount guaranteed together with all other guarantees under Title III for the same veteran does not exceed $2,000.

(c) The loan conforms to all other applicable requirements of §§ 36.4100–36.4151.

§ 36.4122 *Two or more eligible veterans or borrowers.* (a) In the absence of a statement to the contrary, an application signed by two or more eligible veterans shall be conclusively presumed to be an application by each for the guaranty of an equal proportionate part of the entire amount to be guaranteed: *Provided, however,* That if husband and wife execute the application, both being eligible veterans, it will be conclusively presumed in the absence of a contrary statement in the application that it is an application for guaranty on behalf of the husband only, unless the amount of the guaranty then available to the husband is insufficient to meet the requirement of the case for guaranty of a proper amount under §§ 36.4100–36.4151 and the terms of the application; in which event the deficiency may be charged against the amount available to the wife, unless she has in the application or otherwise (before approval) stated in writing her unwillingness to be so charged.

(b) The Administrator will not require a wife to sign an application made by her husband. If she also is an eligible veteran and desires to exercise her right as such to obtain a guaranty, a separate application by her will be required. Signature of her husband to indicate his pro forma joinder will be required only when the wife is resident of, or the application is signed in, or the property to be encumbered is situated in, a State under the laws of which such contract cannot be legally executed by a married woman alone as in the case of an unmarried woman.

§ 36.4123 *Maximum liability where there are two or more veterans.* (a) For the purpose of determining the maximum amount of the potential liability of the United States under a guaranty incident to an obligation on which two or more eligible veterans who applied for the guaranty are liable, the obligation will be deemed a several, and not a joint, obligation of the respective applicants who were charged with the guaranty or a part thereof notwithstanding that as among the debtors or any of them, and as between them, or any of them, and the creditor, the obligation is in fact and law a joint obligation or a joint and several obligation.

(b) In no event will the amount of any veteran's debt thereunder be deemed to exceed for guaranty purposes the amount for which each veteran is legally liable to the holder of the obligation, nor the value of the interest of the veteran in the property. If more than one of the obligors is an eligible veteran and application by him or them is granted, the maximum aggregate amount of the guarantees will be the sum of the amounts available to each applying veteran but in no event will the aggregate of the guarantees for more than one veteran exceed 50 per centum of the total loan except as provided under section 505 of the act.

(c) For the purpose of § 36.4123 the wife of a principal obligor shall not be counted unless (1) she is legally liable on the obligation under the law of the jurisdiction where she executed it, and (2) if she is a veteran she be properly chargeable with a part or all of the guaranty as provided in § 36.4122.

§ 36.4124 *Veteran's application.* (a) To apply for a guaranteed loan the veteran and the prospective lender shall complete and sign in duplicate Form 1822, Application for Farm Loan Guaranty. Before or after preparing the application, and before submitting it, the lender and the veteran will address a joint inquiry to the nearest office of the Veterans' Administration on Form 1800. Certification of Eligibility, or otherwise. In addition to the necessary identifying information, they will state whether the property to be encumbered is real or personal, or both, the State and county in which it is situated, and the nearest highway. The Administrator will reply on said Form 1800 or otherwise, stating the name and address of an approved appraiser of realty, and in the case of personal property, the person or persons to function as such.

(b) If instructed by the Administrator so to do, on Form 1800, Certification of Eligibility, or otherwise, the creditor will secure a credit report. If not so instructed such report will not be required by the Veterans' Administration. (See paragraph (d) of this section.)

(c) If the proposed loan is for repairs, alterations or improvements to realty the appraisal report shall reflect an examination of the building contract, and the plans and specifications, if any, and shall include appropriate data sufficient to afford a basis for estimating the increased value of the farm to result from such repairs, alterations or improvements: *Provided, however,* That if the cost of such repairs, alterations and improvements does not exceed $500 the appraisal requirements of §§ 36.4100–36.4151 will be met by an appraisal report by the agency, and no plans or detailed specifications will be required as a condition to a guaranty otherwise proper. Such appraisal report may be abbreviated and consist of bill of material, estimate of labor cost, general description of the work to be done, and opinion of the agency as to reasonable normal value, and the enhancement of the value of the propetry.

(d) The veteran, the lender, and the appraiser shall be entitled, before or during the preparation of the application and other papers preliminary to a loan or purchase, to consult with the agency.

(e) In every case the appraiser's report shall indicate the basis, by survey or otherwise, of identifying the real property appraised as that to be encumbered to secure the proposed loan.

(f) If (1) the loan does not exceed $500, (2) the lender does not require a mortgage, and (3) the loan otherwise complied with §§ 36.4100–36.4151, the provisions of paragraphs (b), (c) and (e) of this section; paragraphs (d), (e) and (h) of § 36.4125; paragraphs (a), (c) and (d) of § 36.4130; subparagraphs (2) and (3) of paragraph (a) of § 36.4131; and paragraphs (c) and (e) of § 36.4132 shall be inapplicable to such loan and any guaranty thereof: *Provided, however,* That in every such case there shall be submitted with the application a report by the agency as to the reasonable normal value of the work, or property, real or personal, to be purchased, repaired, altered, or improved.

(g) If the guaranty is applied for in connection with the acquisition of, or a loan upon livestock, equipment machinery, or implements, the agency shall upon inspection or evidence and review of the application report its opinion as to the reasonable normal value of such property, and its recommendation as to the guaranty. Such report shall constitute an appraisal.

§ 36.4125 *Papers required.* The prospective lender shall submit to the agency the following papers:

(a) Certification of eligibility (see § 36.4124 (a)).

(b) Loan Guaranty Certificate (Form 1821 attached to application).

(c) Original application for guaranty signed by prospective lender and borrower (see § 36.4124 (a)).

(d) The credit report, if required. (See § 36.4124 (b) and (d).)

(e) The original appraisal report, Form 1833. (See § 36.4124 (c), (f) and (g).)

(f) Copy of purchase option, if any; and copy of conditional sales agreement if loan is to be predicated on such an instrument.

(g) Proposed loan closing statement of the estimated amounts to be disbursed by the lender for the account of the borrower (see Form 1806).

(h) Unless stated in the mortgage, or otherwise in the papers submitted, a statement of the kinds and amounts of insurance to be required to protect the mortgagor, the lender and the Administrator against loss by fire and other hazards, and the estimated premium cost thereof. (See § 36.4115.)

(i) When applicable, the original and copy (both signed) of Form 1862, Application to Amend Loan Guaranty Certificate. (See § 36.4131 (c) and (d).)

§ 36.4126 *Recommendation for approval of guaranty.* The Agency shall review the papers to determine whether it will recommend approval of the application for guaranty. Thereupon the Agency shall forward all the papers to the appropriate office of the Administrator with recommendation that (a) the Administrator approve the application, or (b) he disapprove it. If disapproval is recommended the reasons therefor shall be stated in writing at the time the papers are forwarded. A recommendation that the application be approved, shall be appropriately endorsed on the original of the application. If more than one person functions as or for the Agency in making such recommendation each such person shall sign the recommendation made, indicating concurrence or dissent. In case any such person fails to participate in the decision or is absent, the appropriate fact and name of such person shall be noted on the recommendation.

§ 36.4127 *Administrator's action on application.* (a) Upon receipt of the papers from the Agency, the Administrator will determine whether to approve the application. If disapproved he shall return to the proposed lender all papers received from the lender except the original application for guaranty and the original appraisal report and shall state that the application for guaranty has been denied and the reasons therefor. He shall send a copy of the letter to the veteran and the Agency. Upon denial any expenses incurred by the lender or the borrower shall be borne by them or either of them as they shall have agreed.

(b) (1) The veteran and the proposed lender, or either, may appeal to the Administrator for review of a denial of the application.

(2) Such appeal may be by letter, or on any prescribed form, and shall be mailed or delivered to central office of the Veterans' Administration within one month after receipt of notice of denial.

(c) (1) If for any reason the loan transaction is not concluded and the same or another lender thereafter wishes to consider making a loan on the same security described in the original application, a supplemental application, if the same lender, or a new application if a different lender, may be submitted. If accompanying it is a statement by the borrower and lender that the condition of the security is substantially the same as when the appraisal report was made, the supplemental or new application may be approved without a new appraisal, if the supplemental or new application shall have been received by the Administrator within three months from the date of the appraisal report.

(2) Without reference to the time limit stated in subparagraph (1) hereof, a copy of the appraisal report will be supplied without cost to a prospective new lender or to the original proposed lender at the currently prescribed price for a copy.

§ 36.4128 *Execution and form of guaranty.* (a) If the Administrator approves the application he shall notify the Agency and the veteran thereof. For the purpose of evidencing the contract of guaranty, he shall execute a Loan Guaranty Certificate, to become effective upon the conditions therein stated. It shall be in substantially the form following:

Finance Form 1821
Nov. 1944

UNITED STATES OF AMERICA

LOAN GUARANTY CERTIFICATE ISSUED BY VETERANS' ADMINISTRATION

State _____
(Where property is located)
Number L. F. _____
(To be filled in by V. A.)

_____
(Lender) (Exactly as Payee's name will appear on note)

_____
(Borrower-Veteran) (Exactly as to be signed on note and mortgage)

_____
(House or Box Number—R. F. D. or Street—Post Office—County)

_____
(State)

_____
(House or Box Number—Street—Post office—County)

_____
(State)

I

A. This certificate shall become effective when the requirements of the statute and regulations have been complied with and the acts certified in Part III hereof have been

accomplished in compliance with said requirements.

B. When it becomes effective as hereinabove prescribed, this certificate shall obligate the United States of America to pay to the legal holder of the "note" described on the reverse hereof upon his duly filing claim therefor:

1. All or such portion of the maximum amount hereby guaranteed as becomes payable upon the conditions, at the times stated in, and in accordance with the provisions of the Servicemen's Readjustment Act of 1944 (38 U. S. Code 693; 58 Stat. 284), and the regulations issued pursuant thereto which are in effect on the date of this certificate. In no event will the obligation under this certificate exceed $2,000. Subject to the foregoing, this guaranty is for _____ per centum of the principal amount of said "note", but not for more than $_____. In no event will it exceed said percentage of the principal amount.

2. At the expiration of 1 year from the date of the "note", an amount equal to the interest for 1 year at the contract rate on that portion of the indebtedness ("note") originally guaranteed hereby, such payment to be credited on the indebtedness as prescribed by said regulations.

C. Executed on behalf of the United States of America by the Administrator of Veterans' Affairs through the undersigned authorized agent on this date, to become effective in the manner hereinabove prescribed.

Dated _____

ADMINISTRATOR OF VETERANS' AFFAIRS

By _____
(Authorized Agent)

At _____
(Post Office)

NOTE: If loan is not closed the proposed lender, or when paid the holder of the note will mark the certificate "Cancelled", sign thereunder and return the Veterans' Administration.

II

Description of property to be "Mortgaged" (Lot and block, section and township, land lot and Land District, etc., and surveyor's field notes where appropriate and any other language proper to complete description. Include description of personal property, (if any). Describe fully: show serial numbers, if available, or any other means of identification.

Premises identified as _____
(Name of farm, if any, and R. F. D. also number or name of nearest highway)

_____
(City, Town, Village)

_____
(County, Parish)

_____
(State, District, Territory)

and further described as: _____

_____

_____

(If more space is needed, detach and continue description on reverse)

III

CERTIFICATION BY BORROWER AND LENDER

A. We hereby warrant that (1) the undersigned borrower named on the reverse hereof executed the note, the face amount of which is $____ consisting of $_____ principal and $____ interest as defined in the Regulations; (2) it is dated_____ day of _____ 19____; (3) borrower(s) and mortgagor(s) delivered it together with the "mortgage" (as defined in the regulations) bearing the same date, and executed to secure payment of said note; (4) said note and mortgage are in the form and type contemplated in the application of the undersigned pursuant to which this loan guaranty certificate was issued; and (5) the principal stated above has been paid to, or according to the directions of, the undersigned borrower(s).

B. The undersigned lender warrants that (1) the same "mortgage," duly executed and witnessed, acknowledged, or proved as required by law, was properly filed, or filed for record, if and as provided by law on the _____ day of _____, 19____, at _____ M; and was given file No._____ by the Recorder or other proper official; (2) that it covers the property described on the reverse hereof, which is the same property described, or otherwise identified, or referred to, in the above-mentioned application for guaranty and in this loan guaranty certificate, or in the application to amend loan guaranty certificate, if any, applicable to such loan; (3) that no lien superior to said "mortgage" has intervened since the date of said application; and (4) if the approved application for guaranty related to a loan wholly or partly to be secured by a hypothecation or a pledge of personal property, such hypothecation or pledge has become effective by appropriate delivery to the lender and no superior lien has intervened since date of application.

(All signatures must be in ink)

(If a corporation)

_____
(Secretary)

Mr.
Mrs.
Miss _____
(Lender(s))

By: _____
Title—(President, vice president, etc.)

Mr.
Mrs.
Miss _____

Mr.
Mrs.
Miss _____
(Borrower(s))

NOTE 1. If the note is unsecured, references to "mortgage" in paragraph "A" and "B" above are inapplicable. (See Regulations, § 36.4108, Par. (c).)

NOTE 2. If the local law provides for filing only, not recording, chattel mortgages or similar instruments paragraph "B" above nevertheless is to be completed. It refers not only to the County Recorder or Clerk, but also the State Commissioner of Motor Vehicles or other officials who keep motor vehicle mortgage records, and to other similar officials, State or County. (See § 36.4133 of Regulations.)

(b) The word principal as used in the Loan Guaranty Certificate and the certification on the reverse thereof means the amount of money actually disbursed to or for the account of the borrower.

§ 36.4129 *Disposition of papers.* The original application for guaranty and the appraisal report will be retained in the files of the Veterans' Administration. The Loan Guaranty Certificate and all other papers will be forwarded to the proposed lender with instructions as to closing the loan in a manner to make the guaranty effective.

§ 36.4130 *Loan procedure after approval of guaranty.* Upon receipt of the papers from the Administrator, the lender shall:

(a) Satisfy himself by "title certificate", as defined in §§ 36.4100–36.4151, as to the title to the real estate to be encumbered (§ 36.4100 (p)), and satisfy himself in such reasonable manner as may be available as to the title to personal property to be encumbered.

(b) Cause all necessary instruments to be properly signed and those to be filed, or filed and recorded, properly witnessed, acknowledged or proved so as to entitle them to filing or recordation.

(c) Disburse all funds in substantial accord with the proposed loan closing statement submitted with the application. (See § 36.4125 (g) and Form 1806 or 1861.)

(d) File with the proper State, County or other public official to be retained where required, or recorded and returned, the "mortgage", and any other appropriate instrument which under the law of the State is required or permitted to be filed or recorded for the purpose of establishing a valid lien as between the parties, or third persons, or of giving actual or constructive notice of the "mortgage," pledge, hypothecation, or other transaction.

(e) Take possession or do any other necessary act to make effective the pledge, or hypothecation, if any.

§ 36.4131 *Report of closing loan.* (a) Within two months after closing the loan and filing with appropriate public official of the proper instruments, or the taking of other appropriate steps, if any, to make the lien effective, the lender shall complete and forward to the Administrator (using prescribed form, if available) a properly signed report of closing the loan stating that:

(1) The disbursement of the amount named in such report as the principal of the note has been completed by the lender, which amount may be not more than 3% in excess of the amount of the proposed loan as stated in the original application for guaranty, without complying with the procedure stated in paragraphs (c) and (d) of this section.

(2) Such disbursements were as estimated on the loan closing statement submitted with the application, except as otherwise stated on the reverse side of the report of closing loan. (See §§ 36.4116 (a) and 36.4125 (g) and Form 1806 or 1861.)

(3) The note and the mortgage (or other security instrument) were properly executed, stating the date, and the latter was duly acknowledged, witnessed, or proved, so that it was legally eligible for filing and in which it was properly filed and the filing number thereof; or in the case of a pledge, or hypothecation the necessary possession, or other steps were taken to make same effective.

(4) The note was dated (stating the date thereon) and signed by the "debtor"; the actual principal amount thereof; and the rate of interest provided therein.

(5) The Loan Guaranty Certificate (stating its L–Number) was completed, and appropriately signed by the lender and the borrower as therein provided.

(b) If the lender is a corporation, its corporate seal shall be impressed on such report.

(c) If the transaction to be closed is essentially the same as indicated in the original application except that:

(1) The amount of the loan actually to be made is more than 103% of the amount stated in the application, or

(2) Personal property to be acquired differs from that described but is for the same use or purpose, and substantially similar in kind, quality and value.

Form 1862, Application to Amend Loan Guaranty Certificate, will be completed and signed in duplicate.

(d) The lender will forward the original and copy of Form 1862, Application to Amend Loan Guaranty Certificate, to the "Agency," which will recommend approval or disapproval and forward both to the Veterans' Administration office which issued the Loan Guaranty Certificate. Such office will determine whether to approve the Application to Amend Loan Guaranty Certificate. Such determination will be based on the original application, the evidence submitted in or with the original application, the application to amend, the recommendation of the Agency, and such other evidence, if any, as it considers necessary. Notice of action will be given as in the case of original applications. If approved such approval will be appropriately indicated on the original, and such original, duly executed by the Veterans' Administration will be forwarded to the lender. It may be attached to the original Loan Guaranty Certificate to evidence amendment thereof as reflected by such "rider."

§ 36.4132 *Construction loans.* (a) Upon the submission to an Agency of an application made pursuant to section 502 of the act for the guaranty of a loan for construction on a farm owned by the veteran, or for repairs, alterations or improvements thereon (hereinafter collectively refered to as "construction loans") the guaranty will be issued to become effective only upon completion thereof, and upon fulfillment of the same requirements of these regulations as are applicable to the guaranty of loans for the acquisition of residential or nonresidential farm buildings other than by construction.

(b) Notwithstanding the provisions of paragraph (a) of this section, the guaranty mentioned therein may become effective without the entire amount of the loan having been disbursed if:

(1) Complete disbursement is prevented, in the exercise of ordinary care, by reason of the filing of mechanics' liens or other liens, or other controversy or threat of litigation, as to entitlement to any part of the proceeds of such loans; and

(2) There is paid to an escrow agent approved by the Administrator so much of such proceeds as have not been disbursed, or other arrangements satisfactory to the Administrator have been made for assuring the availability of such sums; and

(3) There is issued by the Administrator Form 1863, Approval of Escrow Certificate, which may be attached to the Loan Guaranty Certificate.

(c) For construction loans the lender will follow the procedure provided in §§ 36.4124 to 36.4131, inclusive, for the guaranty of loans for the purchase of farms, and in addition will furnish to the Agency:

(1) Complete plans and specifications, except as provided in § 36.4124 (c). When complete plans and specifications are not required the data mentioned in said paragraph (c) will be supplied unless § 36.4124 (g) is applicable, in which event the requirements will be those stated therein.

(2) An estimate, prepared by a qualified appraiser, of the normal agricultural value of the property on which the improvements will be situated together with a separate estimate of the increased value of the property which will result from the improvements according to the plans and specifications or other data. (See § 36.4124 (c).) Such estimates of value are in addition to the appraiser's report, otherwise required;

(3) A copy of the agreement or agreements (which may be unsigned) on which the proceeds of the proposed loan will be disbursed.

(d) Upon the receipt of such papers the Agency will follow the procedure prescribed in § 36.4126 and submit same to the Administrator for action as prescribed in §§ 36.4127 and 36.4128.

(e) The Loan Guaranty Certificate shall become effective only upon the conditions stated in § 36.4130 and in addition the further condition that there be supplied to the Administrator a statement by an appraiser on Form 1803 (a), Statement by Appraiser on Completion of New Construction. It shall recite that:

(1) He has inspected the construction, repairs, alterations, or improvements.

(2) The same have been constructed and completed in substantial conformity with the contract, the plans and specification (if any), and any authorized changes therein (if any), permitted by §§ 36.4100–36.4151, or, in those cases embraced in § 36.4124 (c) or § 36.4124 (f) there are no plans and specifications, within good building practices.

(3) The increased value of the property as completed and which will be encumbered is substantially in accord with his estimate.

(f) During the course of construction the Administrator shall be entitled at his expense, to cause such inspection of the construction work at such time or times as he may determine.

(g) Upon compliance with the requirements of this section and of §§ 36.4130 and 36.4131 relating to the guaranty becoming effective in other than construction loan cases, said Loan Guaranty Certificate shall become effective as originally executed (and subject to § 36.4131), or as amended pursuant to approval of application therefor on Form 1862, Application to Amend Loan Guaranty Certificate. (See § 36.4131 (c) (d).)

(h) The borrower and lender may contract for the payment to the lender of a reasonable sum for the advance of funds during the construction and supervision or inspection of the construction.

(i) Minor changes may be made in the plans and specifications or substitution of material of substantially equal quality or value, as the creditor, the debtor, and the builder (contractor) may agree if same are not of a major character and in the aggregate do not increase or decrease the cost more than five per centum of the contract price. This does not modify the provisions of § 36.4131. Changes or substitutions other than as herein stated must have the approval of the Administrator.

(j) On an application made pursuant to section 501 for the guaranty of a loan for the construction on farm property of a unit to be occupied by the veteran as a home, in addition to the requirements prescribed in the foregoing paragraphs the appraisal report shall include appropriate data sufficient to afford a basis for estimating the effect such new building would have on the value of the farm, as is required in the case of repairs, alterations or improvements by paragraph (c) of § 36.4124.

§ 36.4133 *When guaranty does not apply.* The guaranty shall not cover any loss sustained by the creditor as the result of:

(a) The acceptance by the mortgagee of a "mortgage" on any real or personal property, title to which is not merchantable;

(b) Failure of the mortgagee to procure a duly recorded lien of the dignity required by §§ 36.4100–36.4151; or a lien of such dignity by filing, without recording, if lawful, or by pledge or otherwise as required or permitted by applicable law in the jurisdiction where the property is situated at the time the loan is closed;

(c) Failure of the mortgagee to comply with § 36.4115 with respect to insurance;

(d) A tax sale pursuant to execution, or otherwise as provided by law, occasioned by nonpayment of taxes accruing against the mortgaged property after the date of the "mortgage" if "mortgagee" fails to give notice to the Administrator of the delinquent taxes at least one month before such sale;

(e) A release by the creditor of the lien on any of the real or personal property securing the guaranteed loan, or any part thereof unless the Administrator consents in writing. Such consent may be granted if the debt is appropriately reduced or on such other terms as the Administrator may determine: *Provided however,* That if the land is sought by a public authority for highway or other purposes, consent is hereby given for the creditor to release without consideration or for such consideration as he deems proper and without reference to the Administrator, the creditor's lien on land without any buildings thereon if the land so released does not exceed five percent of the acreage encumbered and does not exceed $200 in value. The same consent is hereby given when the release, easement grant, or other instrument is sought by a public or private agency, or person, for the purpose of pipe line, telephone, telegraph or electric transmission lines: *Provided, however,* That when such releases, or grants by the lender for any one or more of the purposes stated in this paragraph, or otherwise, with or without specific consent by the Administrator, shall have decreased the security as much as five percent in acreage, or $200 in value, no further releases shall be executed, without consent of the Administrator. If release of lien is executed contrary to the provisions of these regulations the amount of the guaranty will be reduced proportionately in the same manner as if the value of the released property were

applied as a credit on the unpaid balance of the loan. The provisions of this paragraph will not be construed to affect the guaranty in the event of any grant of title or easement that leaves unaffected the lien on the property affected thereby; or

(f) Sale by reason of foreclosure of a superior lien if the holder of the guaranteed loan secured by a subordinate lien has knowledge of such foreclosure sale as much as 10 days prior thereto and fails to notify the Administrator of the time and place thereof.

(g) The exercise of a right of reverter for breach of restrictive covenants.

Claim Under a Guaranty

§ 36.4134 *Default.* (a) In the event of default, not cured, continuing three months on an amortized loan or one month on a term loan the "creditor" may elect to assert claim under the guaranty, and give notice thereof to the Administrator.

(b) If any default occasioned by failure seasonably to pay to the "creditor" entitled any amount of principal or interest due him under the contract (not cured) shall have persisted as long as six months the holder of the indebtedness shall give notice thereof to the Administrator notwithstanding the failure results from payments on "advances" as provided in § 36.4118 or from any indulgence of the debtor as provided in §§ 36.4135 and 36.4141.

(c) (1) The notice shall state the loan guaranty number if available. If not available other identifying data shall be included, such as date and amount of original obligation, location of Veterans' Administration office that issued the guaranty and the property encumbered.

(2) In all cases the notice shall state the name and last known address of the debtor, of the veteran, and of the creditor, and the date and manner of default, and amount past due. If he desires, the creditor may also state his views as to any indulgence that should be extended.

(3) The notice to the Administrator shall be mailed by registered mail or personally delivered in exchange for a written receipt within one month after the expiration of said six months' period.

§ 36.4135 *Claim on notice of default.* (a) In the notice of default, or separately, then, or later, the creditor may make claim under the guaranty.

(b) Then or thereafter the creditor may also give notice of his intention to foreclose the lien or liens securing the indebtedness.

(c) The Administrator may approve the creditor's request, if any, to postpone action to press his claim against the mortgagor, or the property. Such postponement with the consent of the Administrator, shall not operate to void or diminish the ultimate liability under the guaranty. In no event shall indulgence or postponement of action authorized by §§ 36.4100–36.4151 impair any right of the creditor to thereafter proceed within the applicable statute of limitations period as if there had been no indulgence or postponement.

§ 36.4136 *Legal action.* (a) The creditor shall not begin action in court or give notice of sale under power of sale, or repossess the property, real or personal, or otherwise take steps to terminate the debtor's rights in the property until the expiration of thirty (30) days after delivery to the Administrator of the notice of intention to foreclose, repossess or otherwise to so terminate the debtor's rights. Notwithstanding paragraph (a) of § 36.4134 such notice may be given at any time after default.

(b) (1) If the circumstances require immediate action to protect the interest of the creditor or the Administrator, the Administrator may waive the requirement for prior notice if notice of the action taken is immediately given.

(2) Without limiting the foregoing, the existence of conditions justifying the appointment of a Receiver for the property shall be sufficient excuse for beginning suit without prior notice to the Administrator if within ten days after commencement of the suit or action, plaintiff gives the Administrator notice thereof.

§ 36.4137 *Notice of suit and subsequent sale.* (a) Within ten days after beginning suit or causing notice of sale without suit to be given, the creditor shall notify the Administrator thereof by registered mail, or by personal delivery of notice in exchange for written receipt. The notice shall state whether the foreclosure will be by proceeding in court, or under a power of sale; the style and number of the suit, if any, and the name and location of the court in which pending.

(b) The creditor shall give written notice to the Administrator by registered mail (or delivery) of any foreclosure sale, judicial, or under a power of sale; or of any proposed termination of the rights of any vendee or his immediate or remote guarantee (assignee) pursuant to any power or option in a sales contract, or in any other instrument affecting the property which constitutes any security for the obligation guaranteed. Such notice shall be given so that it is received at least thirty days before such sale or other proposed action. It shall state the date, hour and place thereof. The Administrator may bid thereat on the same terms as the lender or other bidders, and may exercise any right the debtor could exercise by virtue of the contract, or any statute, or otherwise. This section is applicable whether the suit, or the sale, or termination, occur before or after payment of the guaranty.

§ 36.4138 *Death of veteran or other owner.* (a) In the event the creditor has knowledge of the death of the veteran or of any owner of an interest in the encumbered property, or the death of any other person liable on the indebtedness which is guaranteed in whole or in part, the creditor shall take such steps, if any, as are legally necessary, and reasonably available, in the jurisdiction where the encumbered property is situated, to avoid loss of the lien, or impairment thereof, or of all or part of the proceeds of any sale of the property as a result of, or incident to, such death, or of any probate proceedings thereby occasioned in said jurisdiction.

(b) In addition to protecting the lien rights as required by paragraph (a) of this section, the creditor at his discretion may proceed in probate, or otherwise, as may be permissible and feasible, in any jurisdiction where administration proceedings are pending or properly may be instituted, or other appropriate legal action taken, against assets or persons, to assert any rights, by means of any remedies, therein available to a similarly situated creditor of the decedent.

(c) Upon direction of the Administrator and his designation of an accessible attorney for the purpose, and making appropriate provisions for advancing or paying the costs and expenses of the proceeding, the creditor shall proceed as provided in paragraph (b) of this section: *Provided, however,* That in any case the Administrator may, at his option, proceed immediately in respect to protecting the lien, or asserting claim as contemplated by paragraph (b) of this section, or as to both remedies. If the Administrator takes action, it may be in his name or the name of the creditor as the Administrator may elect and as may be appropriate under applicable law. If action is taken by the Administrator he shall seasonably notify the creditor thereof.

(d) Nothing in this section shall impair any right of set-off or other right or remedy of the Administrator.

§ 36.4139 *Death or insolvency of creditor.* (a) Immediately upon the death of the "creditor" and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a "trust," or "deposit," or other account, to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the "note" shall, nevertheless, be treated as a set-off and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: *Provided, however,* That any unpaid taxes, insurance premiums, rents, or advances may be paid by the holder of the indebtedness, at his option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This section shall be applicable whether the estate of the deceased creditor is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of creditor;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the creditor, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the creditor's property; or, in any case

(4) Upon the written request of the debtor if all accrued and due insurance premiums, taxes, and rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or

(b) of this section interest on the note and on the credit balance of the "deposits" mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid "advances", if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise, shall be treated as is the death of an individual as provided in paragraph (a).

§ 36.4140 *Filing claim under guaranty.* Claim under the guaranty may be made on Form 1864, Claim Under the Guaranty. Subject to the limitation that the total amount payable under the guaranty shall in no event exceed the original amount thereof, the amount payable under the guaranty shall be the percentage of the indebtedness originally guaranteed applied to the indebtedness (as defined in § 36.4100 (m)), computed as of the date of the claim, and reduced by any payments theretofore made by the United States pursuant to the guaranty.

§ 36.4141 *Options available to Administrator.* Upon receipt of claim under the guaranty, or notice of intention to foreclose, the Administrator shall have the following options:

(a) Pay to the creditor not later than one month after receipt of notice of any default, as a partial payment of any actual or potential claim under the guaranty, the amount of principal, interest, taxes, advances, or other items in default; and in consideration of such payment the lender shall be deemed to have agreed to refrain from giving effect to any acceleration provisions by reason of defaults prior to the date of notice of default theretofore given: *Provided, however,* That unless the creditor consents, the Administrator may exercise this option once only, and in an amount not exceeding an amount equivalent to the aggregate of principal and interest payable in one year, or not exceeding ten per centum of the original amount of the guaranty, whichever sum is less.

(b) Pay the creditor within one month after receipt of claim the full amount payable under the guaranty without requiring foreclosure, or personal action.

(c) Pay to the creditor promptly after receipt of claim any amount agreed upon, not exceeding the amount due under the guaranty; and notify him to institute appropriate foreclosure proceedings, with or without legal action to reduce the debt to judgment, against all or any of the parties liable thereon, and whose names are stated in such notice to the creditor.

(d) If the creditor does not begin appropriate action within two months after receipt of notice to institute action as provided in paragraph (c) of this section, the Administrator shall be entitled to begin and prosecute the same to completion in the name of the creditor, or of the Administrator on behalf of the United States, as may be appropriate under applicable laws and rules of procedure; *Provided, however,* That in such event the Administrator shall pay (in advance if required under the practice in the jurisdiction) all court costs, and other expenses, and provide the legal services required.

§ 36.4142 *Refinancing and extension of guaranty.* (a) (1) In addition to the options available under § 36.4138 or § 36.4141, the Administrator, upon receiving (i) notice of intention to foreclose by judicial proceedings or otherwise or to repossess the property, real or personal, or otherwise to terminate the debtor's rights therein, or (ii) a claim for a guaranty, shall be entitled to obtain a refinancing of the indebtedness by delivering notice of intention so to do to the creditor prior to the date upon which otherwise it would be proper for the creditor to proceed. Upon receipt from the Administrator of such notice of intention to obtain a refinancing the creditor's right to proceed shall be suspended for sixty (60) days from the date stated by the Administrator in such notice as the date on which the Administrator received the creditor's notice or claim.

(2) If within the sixty-day period prescribed in subparagraph (1) of this paragraph, an offer is received by the creditor to pay, or to purchase the indebtedness at par and interest to date of closing, it shall be the duty of the creditor to forthwith accept such offer, to execute and deliver appropriate instruments without recourse, and to refrain from further proceedings, or repossession, or termination of the debtor's rights.

(3) When (i) a claim for guaranty is filed, or (ii) when a refinancing occurs and an offer is made as contemplated by subparagraphs (1) and (2) of this paragraph, the creditor shall not be entitled to treat payments theretofore made by the debtor, or another, as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note. or mortgage, or otherwise, to the contrary.

(4) Nothing herein shall be construed to require a creditor to lend money for such refinancing, nor to affect guarantees issued prior to the effective date of this amendment.

(b) If refinanced in any manner the Administrator may continue in effect the guaranty granted with respect to the previous loan in such manner as to cover the loan which affected the refinancing.

(c) The Administrator in appropriate cases shall be entitled to exercise any redemption rights of a debtor, or a creditor, in connection with the loan guaranteed or property rights arising out of, or incident to such loan.

§ 36.4143 *Subrogation.* (a) Any amounts paid to the creditor by the Administrator pursuant to the guaranty shall constitute a debt due to the United States by the veteran on whose application the guaranty was made; and by his estate upon his death. The Administrator is subrogated to the contract and the lien rights of the creditor to the extent of such payments, but junior to the creditor's rights as against the debtor or the encumbered property until the creditor shall have received the full amount payable under his contract with the debtor. No partial or complete release by the creditor of the debtor or of the lien shall impair any rights of the Administrator, by virtue of the lien, or otherwise.

(b) The creditor, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town, or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

§ 36.4144 *Future action against mortgagor.* In addition to the amount, if any, collected from the proceeds of the encumbered property by reason of the right of subrogation, the United States will collect from the veteran, or his estate, by set-off against any amounts otherwise payable to the veteran or his estate; or in any other lawful manner, any sums disbursed by the United States on account of the claim pursuant to the guaranty.

§ 36.4145 *Suit by Administrator.* (a) Whenever pursuant to §§ 36.4100–36.4151, the Administrator institutes, or causes to be instituted by the creditor, or otherwise, any suit in equity; action at law; or probate proceedings or the filing of a claim in such; or other legal or equitable proceedings of any character, or any sale, in court or pursuant to any power of sale, the person or persons properly instituting the same (including the Administrator) shall be entitled to recoup from any proceeds realized therefrom any expenses reasonably incurred, including trustee fees, court costs, and attorney fee paid (or, the reasonable value of the services of the trustee and of the attorney, if performed by salaried person or persons, or by the party himself, when proper).

(b) The net proceeds, after setting off such items that may properly be recouped, shall be credited to the indebtedness, or otherwise as may be proper under the facts.

(c) In determining the propriety of recoupment and the amount thereof consideration shall be given to any provisions in the "note" or "mortgage" relating to such items, and any amounts actually realized pursuant thereto.

§ 36.4146 *Creditor's records and reports required.* (a) The creditor shall maintain a record of the amounts of

payments received on the obligation and disbursements chargeable thereto, and the dates thereof. Any creditor who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such creditor; not on the debtor, or the United States.

(b) On any delinquent loan the creditor shall report annually on the anniversary of the earliest unremedied default any amount received or disbursed, the unpaid balance of principal and accrued interest and any other items chargeable; and the nature of any defaults not already reported. He shall include such additional information, if reasonably necessary and obtainable, which may from time to time be requested by the Administrator.

(c) A proposed lender may be required to submit evidence satisfactory to the Administrator of his equipment for maintenance of adequate records on, and his ability to service, loans if guaranteed pursuant to the provisions of the act and §§ 36.4100–36.4151.

§ 36.4147 *Failure to supply information.* Failure to supply any available information required by §§ 36.4100–36.4151 within two months after request therefor will entitle the Administrator to obtain such information otherwise, and the expense of so obtaining it, plus ten dollars to cover estimated overhead expenses, shall be chargeable to the creditor who failed to comply with such request.

§ 36.4148 *Notice to Administrator.* Any notice required by §§ 36.4100–36.4151 to be given the Administrator shall be sufficient if in writing, and delivered at, or mailed to, the Veterans' Administration office at which the application for guaranty was approved or to any changed address of which the creditor has been given notice or, at the option of the creditor, to the central office of the Veterans' Administration, Washington 25, D. C. If mailed the notice shall be by registered mail when so provided by §§ 36.4100 to 36.4151.

§ 36.4149 *Right to inspect books.* The Administrator has the right to inspect, at a reasonable time and place the papers and records pertaining to the loan and guaranty. If permission to inspect is declined the Administrator may enforce the right by subpoena under the provisions of Title III of Public No. 844, 74th Congress, 49 Stat. 2031–35, 38 U. S. C. 131, or in any other lawful manner.

§ 36.4150 *Forms, construction to be placed on references to.* All references in the regulations to Form 1800, Certification of Eligibility, or to other form numbers, shall be construed to include any revision of the same forms, identified by the same, or by different numbers.

§ 36.4151 *Disqualified lenders and bidders.* Except under unusual circumstances and upon prior approval by the Administrator an application for guaranty of a loan will not be approved if the lender is known to be an employee of the Veterans' Administration or of the Agency; and without such approval, an employee of either may not bid at a foreclosure sale of the security for a guaranteed loan.

GUARANTY OF LOANS ON PURCHASES OF BUSINESS, ETC.

AUTHORITY: §§ 36.4200 to 36.4251 issued under 58 Stat. 284; 38 U. S. C. 693.

§ 36.4200 *Definitions.* Wherever used in §§ 36.4200–36.4251, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Administrator" means the Administrator of Veterans' Affairs or any employee of the Veterans' Administration designated by him to act in his stead.

(b) "United States" used geographically means the several States, Territories and possessions, and the District of Columbia.

(c) "State" means any of the several States, Territories and possessions, and the District of Columbia.

(d) "Designated agency" or "agency" as used in respect to processing applications for guaranty of loans, means any Federal instrumentality designated by the Administrator (including Veterans' Administration if so designated) to certify whether an application meets the requirements of the act and regulations, and recommend whether the application should be approved if the applicant is found eligible.

(e) "Federal agency" as used with respect to agencies making, guaranteeing or insuring primary loans, means any Executive Department, or administrative agency or unit of the United States Government (including a corporation essentially a part of the Executive Branch) at any time authorized by law to make, guarantee or insure such loans.

(f) "Guaranty" means the obligation of the United States of America assumed by virtue of the guaranty by the Administrator as provided in Title III of the Servicemen's Readjustment Act of 1944 (58 Stat. 284; 38 U. S. C. 693) and subject to the limitations and conditions thereof and of §§ 36.4200–36.4251. The subject of the guaranty is that portion of an eligible loan procured by an eligible veteran which may be subject to being guaranteed as provided in said Title III, as determined by the Administrator upon application in accordance with §§ 36.4200–36,4251.

(g) "Mortgage" means an applicable type of security instrument commonly used or legally available to secure loans or the unpaid portion of the purchase price of real or personal property in a State, District, Territory, or possession of the United States of America in which the property is situated. It includes, for example, deeds of trust, security deeds, escrow instruments, real estate mortgages, conditional sales agreements and chattel mortgages.

(h) "Secondary" or "junior" loan means a loan which is secured by a lien or liens subordinate to any other lien or liens on the same property.

(i) "Guaranteed loan" means a loan unsecured, or secured by a primary lien, or where permissible under the act and §§ 36.4200 to 36.4251, inclusive, a secondary lien, in which loan is guaranteed in whole or in part by the Administrator as evidenced by endorsement thereon; or by Loan Guaranty Certificate issued by the Administrator, and which shall have become effective as prescribed by §§ 36.4200–36,4251, or by such other legal evidence as may be provided by the Administrator.

(j) (1) "Business" means any gainful occupation or profession other than farming which constitutes the applicant's major occupation.

(2) "Business loan" means an obligation for all or part of the purchase price, or a loan obtained for the purpose of paying all or part of the purchase price of (i) the entire, or a part interest in, an existing business enterprise whether it is, or is to be operated by an individual, partnership or joint venture, and includes leasehold rights as lessor or lessee of real or personal property a part of such enterprise and similarly good will, franchise rights, and rights as licensee, (ii) supplies, machinery, equipment or tools.

(3) "Business realty loan" means a loan for the purchase of land or buildings or both to be used by the applicant in pursuing a gainful occupation other than farming. Leasehold rights included in subparagraph (2) will not be deemed "business realty."

(4) "Purchased or to be purchased" as used in section 503 (1) of the act refers to real or personal property to be used for a purpose stated in section 503 of the act, whether the property is purchased contemporaneously with such application, or is to be purchased subsequent thereto. But as to any loan for a future purchase the guaranty will become effective only from the time the purchase is consummated.

(k) (1) "Reasonable normal value" is the price the property would ordinarily bring or the transaction would ordinarily cost in a contract between a willing and well informed buyer and a willing and well informed seller, both acting free from necessity and under circumstances not affected by economic or other conditions of an impermanent character.

(2) The purpose and intent are to assure that the price to be paid is not in excess of that on which a fair profit can be earned based on (i) the past record, if any; (ii) the reasonable probabilities of the future; and (iii) reasonably efficient management.

(l) (1) "Land" as used in section 503 of the act refers to an interest in realty defined in this section, and subject to the conditions therein.

(i) An interest in realty may be a fee simple estate, or certain other estates indicated in subdivisions (i) to (vi) of this subparagraph (1) (including an estate for years) eligible as security for guaranteed loans. But in any event the estate shall be one limited to end at a date more than 14 years after the ultimate maturity date of the loan, or when the fee simple title shall vest in the lessee; except that, if it is a leasehold that terminates earlier, it shall nevertheless be acceptable if lessee has the irrevocable right to renew for a term end-

ing more than 14 years after the ultimate maturity date of the loan or until the fee simple title shall vest in lessee: *Provided*, The mortgagee obtains a mortgage lien of the required dignity upon such option right or anticipated reversion or remainder in fee.

(ii) A life estate or other estate of uncertain duration is excluded, unless the remainder interests are also encumbered by a lien of the same dignity to secure the same debt.

(iii) A remainder interest in realty shall be eligible as security for a guaranteed loan only in the event that all the owners of intervening immediate or remainder interests lawfully can and do (*a*) joint in the mortgage in such manner as to subject all such intervening estates to the lien; or (*b*) execute and deliver a lease or other proper conveyance to the owner of the ultimate remainder in fee simple in such manner as to assure his legal right to possession and enjoyment until the vesting of his ultimate remainder interest.

(iv) If other than a fee simple estate or estate for years with minimum duration as stated in subdivision (i) of this subparagraph (1) is offered as security full information may be submitted to the Administrator before taking application from the veteran. The Administrator shall determine the eligibility of any such estate.

(v) The existence of any of the following will not require denial of the guaranty; hence will not require special submission:

(*a*) Outstanding easements for public utilities, party walls, driveways, and similar purposes;

(*b*) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(*c*) Slight encroachments by adjoining improvements;

(*d*) Outstanding water, oil, gas or other mineral, or timber rights which do not and will not materially impair the value for business purposes, and which are customarily waived by prudent lenders in the community: *Provided, however*, That if there is outstanding any legal right to quarry, mine or drill within 400 feet of the encumbered building the application for guaranty may be denied for that reason unless upon consideration of all the facts the Administrator determines otherwise. Such determination at the option of the lender or borrower may be obtained upon a special submission of all the facts prior to taking application for guaranty.

(vi) A mortgage on an undivided interest in realty shall not be acceptable unless all co-tenants of the veteran join in the mortgage, and unless such joinder has the legal effect of creating a lien on the property such as is otherwise required. In such case it shall not be required that the co-tenants join in, endorse, or otherwise become personally liable on the veteran's indebtedness. Notwithstanding such joinder in the mortgage by the co-tenants the value of the security for purpose of guaranty shall be determined with respect to the individual interest of the veteran only, and the guaranty will be limited to the proper proportion of that sum, irrespective of the actual amount of the loan.

(2) "Buildings" as used in section 503 of the act refer to structures of a permanent nature which are attached to and become a part of the land.

(3) "Personal property" means tangible or intangible property other than land or buildings as defined in subparagraphs (1) and (2) of this paragraph if such property is to be used in a business conducted by the veteran as prescribed in §§ 36.4200–36.4251. It includes property which by reason of the contract of the seller and purchaser remains personalty notwithstanding that except for such contract it would become a "fixture," or otherwise a part of the realty.

(4) "Supplies" means those articles normally used, necessary and expended in the operation of a business or profession, including those required by the service industries, both personal and industrial.

(5) "Equipment, machinery and tools" mean all such articles commonly so described, and which are required for use in pursuing a gainful occupation other than the resale thereof and which will be useful and reasonably necessary for the efficient and successful pursuit of such occupation. Equipment shall include structures which by operation of law or the terms of the applicable lease or other contract of the parties, do not become a part of the realty, and which may be removed without consent, or further consent, of the land owner.

(m) "Indebtedness" means the unpaid principal and accrued interest on the note, bond or other obligations, the subject of the guaranty, and includes also taxes, insurance premiums and any other items for which the debtor is liable under the terms of the mortgage, or other contract, including proper contractural or statutory trustee fees and attorney fees, if any.

(n) "Note" means a promissory note, a bond, or other instrument evidencing the debt and the debtor's promise to pay same.

(o) "Appraiser" means an individual or firm or corporation of recognized standing, approved in writing by the Administrator to appraise property. An applicant for designation as an approved appraiser shall show to the satisfaction of the Administrator that he is of good character and that his experience and information enable him to form sound opinions as to the reasonableness of the purchase price or cost of property to be appraised in the territory in which he expects to operate.

A list of appraisers, considered by the Administrator to be in good standing at the time §§ 36.4200–36.4251, become effective, may be approved.

(p) "Certificate of title" means, with respect to real property, a written and signed opinion or statement as to title by a qualified member of the bar of, or by a title company authorized to do such business in, the jurisdiction in which the mortgaged property is situated; or at the option of borrower and lender a title insurance or guaranty contract by a corporation authorized to engage in such business in the State wherein the property is situated; or appropriate evidence of title in the proposed encumbrancer pursuant to a Torrens or other similar title registration statute.

(q) "Credit report" means the report submitted by any credit reporting agency of at least five years' experience with facilities for national coverage, approved by the Administrator, or any other form of report acceptable to the Administrator for the purpose of determining the applicant's credit standing.

(r) "Eligible veteran" means a veteran who:

(1) Served in the active military or naval service of the United States on or after September 16, 1940, and before the officially declared termination of World War II.

(2) Shall have been discharged or released from active service under conditions other than dishonorable, either

(i) After active service of ninety days or more, or

(ii) Because of injury or disability incurred in service in line of duty, irrespective of the length of service; and

(3) Applies for the benefits of this Title within two years after separation from the military or naval forces, or within two years after the officially declared termination of World War II, whichever is later. In no event, however, may an application be filed later than five years after such termination of such war.

(s) "Eligible lenders" are persons, firms, associations, corporations and "governmental agencies and corporations, either State or Federal".

(t) "Creditor" means the payee, or any subsequent holder of the indebtedness, and includes a mortgagee.

(u) "Debtor" means the maker of the note or obligor in any other obligation, or any other person who is, or becomes, liable thereon, by reason of a contract of assumption or otherwise.

(v) "Used or conducted by a veteran" means personally directed and operated by a veteran on the site, with or without hired labor; not solely operated by a tenant or an employee who does not receive supervision and direction by the veteran.

(w) "Interest" means the compensation fixed by law or by the parties to a contract, for the use or detention of, or forbearance with respect to, money, irrespective of the name applied to such compensation.

§ 36.4201 *Miscellaneous.* Throughout §§ 36.4200–36.4251, unless the context otherwise requires: (a) the singular includes the plural; (b) the masculine includes the feminine and neuter; (c) person includes corporations, partnerships and associations; (d) month means calendar month, i. e., the period beginning on a certain date in one month and ending at midnight on the preceding date of the next month; (e) "the act" or "the statute" means the Servicemen's Readjustment Act of 1944 Ch. 268—78th Congress—2d Session. (Public No. 346), 58 Stat. 284; 38 U. S. C. 693; (f) Title III means Title III of the act.

Loans Eligible for Guaranty

§ 36.4202 *Eligible location.* To be eligible for guaranty a loan for any of the purposes stated in section 503 must be

in connection with an enterprise which has its principal place of business within the United States and any real or personal property encumbered to secure a loan shall be situated within the United States. Temporary removal for use in the course of the business will not affect the guaranty if the lien is not affected.

§ 36.4203 *Loans for business purposes.* Section 503 of the act provides for granting to an eligible veteran "the guaranty of a loan to be used in purchasing any business, land, buildings, supplies, equipment, machinery, or tools, to be used by the applicant in pursuing a gainful occupation (other than farming)." The application, therefore, may be approved by the Administrator if he finds that:

(a) The proceeds of such loan will be used for payment for real or personal property purchased or to be purchased by the veteran and used by him in the bona fide pursuit of such gainful occupation;

(b) Such property will be useful in and reasonably necessary for the efficient and successful pursuit of such occupation;

(c) The ability and experience of the veteran, and the conditions under which he proposes to pursue such occupation, are such that there is a reasonable likelihood that he will be successful in the pursuit of such occupation;

(d) The purchase price paid or to be paid by the veteran for such property does not exceed the reasonable normal value thereof as determined by proper appraisal; and

(e) The loan appears practicable.

§ 36.4204 *Loans for the acquisition of a business.* (a) The assets to be acquired may consist of real or personal property, tangible or intangible, or a combination of any such. The business so acquired may be operated by an individual or a partnership. The appropriate contracts or circumstances shall assure that upon acquisition of the contemplated interest in the business enterprise the veteran, as sole owner or as partner, shall have an active part in the management and direction thereof. The ultimate maturity of such loans shall not be in excess of 5 years.

(b) When the veteran purchases an interest in an existing business which interest will constitute security for a guaranteed loan, the bill of sale or other appropriate instrument shall expressly provide that the good will is included, and when appropriate, and in every case in the service industries, shall contain appropriate provisions, lawful in the jurisdiction, forbidding or restricting the seller's engaging in a similar business within such period of time and such area as the seller and purchaser agree. Encumbrance on interests in the business so acquired shall include all such rights, and in all cases, encumbrances on business interests shall expressly include good will.

(c) (1) To the extent practicable and legally permissible, all assets of the business acquired shall be pledged as security for the loan.

(2) Cash, notes, accounts receivable and other choses in action not an integral part of the business may be excluded.

(3) The lien on personalty may be a secondary lien provided the first lien secures only an obligation for part of the purchase price thereof.

(4) If realty is acquired in the transaction the lien on the realty shall be a first lien unless § 36.4206 is applicable.

(d) If the indebtedness of the veteran is not adequately secured by lien on the entire interest in specific chattels or other personal property but is secured by undivided interests in specific chattels or other personal property, or in a business enterprise owned by more than one person, the requirement of paragraph (1) (1) (vi) of § 36.4200, relating to undivided interests in realty shall be applicable to the interests in said chattels or business or other personal property.

(e) Loans for the acquisition of additional inventory or for other working capital purposes are not included in the act.

§ 36.4205 *Loans for purchases of equipment and supplies*—(a) *Loans for the purchase of equipment, machinery or tools (new or used).* (1) A loan for the entire purchase price of such articles, to be guaranteed in whole or in part, shall be secured by a conditional sales agreement, or by a first lien. The ultimate maturity of such loans shall not be in excess of 3 years.

(2) A loan for the initial payment on the purchase price of such articles shall not exceed one-third of the purchase price and subject to the same limitation shall not exceed $1,000.00. The ultimate maturity of such loans shall not be in excess of one year for loans which do not exceed $500.00, or 2 years for loans exceeding $500.00. Loans for such purposes shall be secured by second lien.

(3) In no event will application for guaranty be granted in respect to an obligation for the unpaid purchase price or any part thereof if application for guaranty shall have been granted (or is pending) in respect to the initial payment on the purchase price of the same property as contemplated by subparagraph (2).

(b) *Loans for the purchase of supplies.* A loan for the purpose of purchasing supplies as defined in § 36.4200 (l) (4) may be made if the loan does not exceed $1,000.00 and the maturity does not exceed 1 year. Such loans may be unsecured if security is not practicable or customary.

§ 36.4206 *Second loans to complete a purchase.* If the loan secured by a first lien is made, guaranteed or insured by a Federal Agency pursuant to law or regulation applicable thereto as provided in section 505 (a) of the act, and application is made to the Administrator to guarantee a second loan to cover all or part of the purchase price, such application may be granted if otherwise proper under the act and §§ 36.4200–36.4251, notwithstanding the loan is not secured by a first lien.

In such case the second loan shall not exceed 20% of the purchase price and the rate of interest shall not exceed 4% per annum.

§ 36.4207 *Life insurance, or additional security.* The lender and borrower may make mutually acceptable arrangements for life insurance, or for other security in addition to the property, if any, encumbered to secure the guaranteed loan.

§ 36.4208 *Loans for and mortgages on business realty*—(a) *Loans for the purchase of business realty (land, building).* Except as provided in section 505 of the act, loans for the purpose of purchasing business realty and in respect to which any guaranty is sought, shall be secured by a first lien on such property; but the existence of tax or special assessment prior liens will not disqualify security which is adequate and otherwise acceptable.

(b) *Mortgages required on business realty.* (1) Each business realty loan guaranteed under the provisions of Title III must be evidenced by a note or notes secured by appropriate security instrument or instruments (mortgage legally sufficient in the jurisdiction in which the property to be encumbered is situated). If the loan to be guaranteed does not exceed $500 and the lender does not require a mortgage, the Administrator may nevertheless guarantee such loan provided it complies otherwise with the act and §§ 36.4200–36.4251.

(2) The law of the State where the contract is made determines the capacity of the parties to contract. Similarly the law of the State wherein the real estate or personal property is situated determines the capacity of mortgagor to encumber and of the mortgagee to hold the legal rights resulting from encumbrance. The act does not modify such law of the State. The guaranty by the Administrator will be available only in the event that under the applicable State law the contract between the borrower and lender is binding on both, and the mortgage has the legal effect intended. Subparagraph (2) of this paragraph will be applicable particularly in cases involving minors, "persons of unsound mind," and persons under other legal disability by reason of the law of the State. It will be applicable also in cases involving mortgage or other loans which any guardian, conservator, or other fiduciary seeks to make or obtain; and to a guaranty thereof for which application is submitted.

(3) A term loan, which is in accord with applicable State or Federal law, and regulations, if, any, may be eligible for guaranty if the amount of the loan to be guaranteed plus the unpaid amount of all obligations secured by liens superior to the lien securing the proposed loan does not exceed two-thirds of the reasonable normal value of the property encumbered to secure the loan and if the ultimate maturity date of the mortgage indebtedness so secured, and to be guaranteed, is not more than five years from the date of the note. Such superior liens shall not be mortgage liens, except when the guaranty is issued pursuant to section 505 of the act.

(4) Except as provided in subparagraph (3) of this paragraph the loan shall be amortized. The obligation to be amortized may, and except for the first year shall, require such periodical payments of stated sums as will in accord-

ance with standard amortization practice result in payment of the entire principal and interest within not more than 20 years from the date of the loan, or the date of assumption by the veteran, whichever is later. At the request of the mortgagor the payments during the first year shall be less than the amount required thereafter, by the sum representing the interest charge on the guaranteed part of the loan, and which interest charge the Administrator will pay at the end of that year.

(5) Increase derived from live-stock which is held as collateral is not required to be included in the lien, and when so included may be disposed of by agreement between creditor and debtor without advising the Administrator of such disposition.

§ 36.4209 *Transfer of title.* The conveyance or other transfer of a veteran's interest in a business, or in other property, real, personal or mixed, which has been acquired wholly or in part with the proceeds of a loan guaranteed in whole or in part by the Administrator, shall not terminate or otherwise affect the contract of guaranty, unless (a) the creditor by express agreement for that purpose releases or otherwise discharges the veteran from personal liability thereon; or (b) by indulgence of, or by agreement with, the veteran's immediate or remote grantee, or vendee, contrary to §§ 36.4200–36.4251, and without the consent of the Administrator the creditor so alters the contract made by the veteran with the lender as to cause discharge of the veteran by operation of law.

§ 36.4210 *Obligation of guarantor.* To the extent prescribed the obligation of the United States is that of a guarantor, not an indemnitor.

§ 36.4211 *Contract provisions.* Subject to the provisions of the act and §§ 36.4200–36.4251, the contract between the lender and borrower may contain such provisions as they agree upon and which are reasonable and customary in the locality where the property is situated.

§ 36.4212 *Repayment provisions, business loans.* (a) Subject to §§ 36.4204, 36.4205 and 36.4208 the terms of repayment of the loan to be guaranteed may be such as the lender and borrower agree. Such terms should be predicated primarily upon the anticipated earning capacity of the business, the nature and normal useful life of the security, if any, and other material factors that would be considered by reasonably prudent persons similarly situated. Generally, such loans should be repayable on a monthly, quarterly, or seasonally amortized basis. An unamortized loan, except as provided in § 36.4208 (b) (3) will not be guaranteed.

(b) The loan agreement may provide for variable amortization payments dependent upon the earnings of the business, and for such other reasonable protective options as usually are required by prudent lenders of the community in comparable transactions.

(c) Any loan guaranteed by the Administrator under Title III of the act shall be payable in full in not more than twenty years.

§ 36.4213 *Prepayments.* (a) When the debt is to be amortized the note or other evidence thereof, or the mortgage securing same, shall contain appropriate provisions granting any person liable for such debt, the right to pay at any time the entire unpaid balance or any part thereof. Unless otherwise agreed all such prepayments shall be credited to the unpaid principal balance of the loan as of the due date of the next instalment. No premiums shall be charged for any partial or entire prepayment.

(b) Any person liable shall be entitled to prepay a term loan, or any part thereof, upon not less than one month's notice. The note or mortgage shall so provide.

(c) Any prepayment shall be applied in the manner and to the items directed by the person making the prepayment.

§ 36.4214 *Pro rata decrease of guaranty.* The amount of the guaranty shall decrease pro rata with any decrease in the amount of the unpaid principal of the loan, prior to the date the claim is submitted.

§ 36.4215 *Insurance coverage required.* (a) Buildings the value of which enter into the appraisal forming the basis for the loan guaranteed shall be insured against fire, and other hazards against which it is customary in the community to insure and in reasonable amount, at least equal to the amount by which the loan exceeds the value of the encumbered land, plus that of the improvements included in the appraisal but which are not subject to the hazards insured against: *Provided,* That upon a satisfactory showing at the time of application for guaranty that (1) it is impossible or impracticable to obtain such insurance because of location, prohibitive cost, or other good reason; (2) prudent lenders in such community customarily do not require such insurance, or some portion thereof (amount or hazard), and (3) the lender submitting the application is willing to make the loan without insurance coverage on one or more of the buildings, or without certain coverage, or in a reduced amount, and subject to the provisions of paragraphs (b) and (c) of this section; the Administrator may at the time of approving the application waive all or part of such insurance requirements, subject to the provisions of said paragraphs (b) and (c) of this section. No waiver will be granted on the basis of premium cost in any case wherein the premium cost on an annual basis does not exceed $5.00 per $1,000 of insurance against the hazard of fire, or $10.00 per $1,000 for fire and all other hazards covered by the insurance. For loans on personalty, insurance collectible in amount equal to the debt and against the hazards usually insured against, if reasonably available, at reasonable cost shall be required. The insurance coverage on personalty will be a factor in determining the practicability of the loan. The procuring of insurance of the amount and coverage stated in the approved application shall constitute conclusive evidence of waiver by the Administrator of insurance in excess of the amount stated in or in connection with the application and also all hazards and property not mentioned therein as hazards and property to be covered.

The creditor shall require that there be maintained in force such insurance of the coverage stated in the approved application in an amount not less than the amount stated or the amount of the unpaid indebtedness whichever is the lesser.

In the event insurance becomes unavailable the fact shall be reported to the Administrator for determination whether waiver shall be granted or loan declared in default.

(b) For the sole purpose of determining the amount payable upon a claim under the guaranty after an uninsured loss (partial or total) has been sustained, the unpaid balance of the loan (except as provided in paragraph (c) of this section) will be deemed to have been reduced by an amount equal to the amount of the uninsured loss, but in no event below an amount equal to the value of the land and other property remaining and subject to the mortgage.

(c) There shall be no reduction of the amount of the guaranty as provided in paragraph (b) of this section by reason of an uninsured loss which is uninsured (as to hazard or amount) by reason of a waiver by the Administrator as provided in paragraph (a) of this section.

(d) All insurance effected on the mortgaged property shall contain appropriate provisions for payment to the creditor (or trustee, or other appropriate person for the benefit of the creditor), of any loss payable thereunder. If by reason of the creditor's failure to require such loss payable provision in the insurance policy payment is not made to the mortgagee the liability on the guaranty nevertheless shall be reduced as provided in paragraph (b) of this section with respect to an uninsured loss, except to the extent that the liability under the policy was discharged by restoring the damaged property, by the insurer, or out of payments thereunder to the insured, or otherwise. No waiver pursuant to paragraph (a) of this section shall modify this paragraph (d).

(e) Upon the creditor (or trustee or other person) collecting the proceeds of any insurance contract, or other sum from any source by reason of loss of or damage to the mortgaged property, he shall be obligated to account for same, by applying it on the indebtedness, or by restoring the property to the extent the expenditure of such proceeds will permit. As to any portion of such proceeds the mortgagee is not entitled to retain for credit on such indebtedness or by reason of other legal right he shall hold and be obligated to pay over the same as trustee for the United States and for the debtor, as their respective interest may appear.

(f) Nothing in §§ 36.4200–36.4251 shall operate to prevent the veteran from procuring acceptable insurance through any authorized insurance agent or broker he selects. In all cases the insurance carrier shall be one licensed to do such business in the State wherein the property is situated.

§ 36.4216 *Loan charges.* (a) In the case of a purchase of business or real or personal property by the veteran, and a guaranty pursuant to the act and §§ 36.4200–36.4251 of an indebtedness representing part of the purchase price, there may be charged to the veteran and included in said note amounts actually paid or incurred by the seller (mortgagee) for such expenses and charges as are chargeable to such purchaser in accord with local custom, if the purchaser so agrees, such as fees for appraisals, credit and character report on the veteran, surveys, fees of purchaser's (not seller's) attorney, recording fees for recording the deed (or other conveyance) and the mortgage only, premiums on fire and other hazard insurance that may be required in accordance with §§ 36.4200–36.4251.

(b) In the case of a loan to the veteran, charges in accord with local custom, such as fees for appraisals, credit and character report, surveys, abstract, or title search, curative work and instruments, attorney fees, fees for tax certificates showing all taxes paid, premiums on fire and other hazard insurance that may be required in accordance with §§ 36.4200–36.4251, revenue stamps, recording fees, etc., all limited to amounts actually paid or incurred by the lender, may be charged to the borrower and withheld from the gross amount of the loan.

(c) Any unreasonable charges shall be grounds for denying an application for guaranty. No brokerage or other charges shall be made against the veteran for obtaining any loan guaranty under this title.

§ 36.4217 *Interest.* (a) The rate of interest chargeable on a loan guaranteed fully or in part, shall not exceed 4 per centum per annum on unpaid principal balances. Interest may be computed in accordance with standard amortization practices.

(b) The rate of interest on a secondary loan which is guaranteed pursuant to section 505 of the act may exceed by not more than 1% per annum the rate charged on the principal loan, but in no event shall the rate on the secondary loan exceed 4% per annum.

§ 36.4218 *Advances.* (a) Nothing herein shall prevent the creditor from making advances for the benefit of the mortgagor to pay taxes, and assessments on the real property (if any) securing the indebtedness, insurance premiums as they become due and the cost of the emergency repairs needed to protect the real or personal property, or to cover some particular emergency requirement of the business other than a working capital requirement, in order to prevent a default or to protect the security for the loan. The amount guaranteed by the Administrator shall be increased pro rata with all such increases in the unpaid principal balance of the loan: *Provided,* That (1) the annual interest rate on all advances shall not exceed 4 per centum per annum; (2) the terms of repayment shall not extend the date of the amortization of the loan, (3) the amount of the guaranty shall in no event exceed the original amount thereof, nor exceed the percentage of the indebtedness originally guaranteed, and (4) as to advances to cover an emergency requirement, the transaction is reported to the Administrator before or within 10 days after such advance, and is approved by him.

(b) In the case of any advance made by a creditor to a debtor, the creditor with the consent of the debtor, may apply any and all payments made by the debtor for a period of twelve months to the liquidation of the advance without considering the original loan in default. This shall not be construed to extend the period of indulgence contemplated by §§ 36.4234 and 36.4235.

Guaranty by the Administrator

§ 36.4220 *Limits.* In no event will the aggregate obligations of the United States as guarantor under Title III exceed $2,000 in respect to one veteran whether there be one or several loans, and whether some are obtained for the acquisition of a home, others for a farm, and others for business, or equipment, or other purposes. Repayment of a loan or loans in whole or in part, or transfer of the encumbered property does not modify or enlarge such limitation. The guaranty shall not at any time exceed 50 per centum of the aggregate of the indebtedness for any of the purposes specified in sections 501, 502 and 503 of the act.

§ 36.4221 *Second loan under section 505 (a).* Section 505 (a) of the act provides that when the principal loan for any of the purposes stated in section 501, 502 or 503 is "approved by a Federal agency to be made or guaranteed or insured by it pursuant to applicable law and regulations, and the veteran is in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof," the Administrator may guarantee the full amount of the second loan, *Provided:*

(a) It does not exceed 20 per centum of the purchase price or cost.

(b) The amount guaranteed together with all other guarantees under Title III for the same veteran does not exceed $2,000.

(c) The loan conforms to all other applicable requirements of §§ 36.4200–36.4251.

§ 36.4222 *Two or more eligible veterans or borrowers.* (a) In the absence of a statement to the contrary, an application signed by two or more eligible veterans shall be conclusively presumed to be an application by each for the guaranty of an equal proportionate part of the entire amount to be guaranteed: *Provided, however,* That if husband and wife execute the application, both being eligible veterans, it will be conclusively presumed in the absence of a contrary statement in the application that it is an application for guaranty on behalf of the husband only, unless the amount of guaranty then available to the husband is insufficient to meet the requirements of the case for guaranty of a proper amount under §§ 36.4200–36.4251, and the terms of the application; in which event the deficiency may be charged against the amount available to the wife, unless she has in the application or otherwise (before approval) stated in writing her unwillingness to be so charged.

(b) The Administrator will not require a wife to sign an application made by her husband. If she also is an eligible veteran and desires to exercise her right as such to obtain a guaranty, a separate application by her will be required. Signature of her husband to indicate his pro forma joinder will be required only when the wife is resident of, or the application is signed in, or the property to be encumbered is situated in, a State under laws of which such contract cannot be legally executed by a married woman alone as in the case of an unmarried woman.

§ 36.4223 *Maximum liability where there are two or more veterans.* (a) For the purpose of determining the maximum amount of the potential liability of the United States under a guaranty incident to an obligation on which two or more eligible veterans who applied for the guaranty are liable, the obligation will be deemed a several, and not a joint, obligation of the respective applicants who were charged with the guaranty or a part thereof notwithstanding that as among the debtors or any of them, and as between them, or any of them, and the creditor, the obligation is in fact and law a joint obligation or a joint and several obligation.

(b) In no event will the amount of any veteran's debt thereunder be deemed to exceed for guaranty purposes the amount for which such veteran is legally liable to the holder of the obligation, nor the value of the interest of the veteran in the property. If more than one of the obligors is an eligible veteran and application by him or them is granted, the maximum aggregate amount of the guaranty will be the sum of the amounts available to each applying veteran but in no event will the aggregate of the guaranties for more than one veteran exceed 50 per centum of the total loan except as provided under section 505 of the act.

For the purpose of § 36.4223 the wife of a principal obligor shall not be counted unless (1) she is legally liable on the obligation under the law of jurisdiction where she executed it, and (2) if she is a veteran she be properly chargeable with a part or all of the guaranty as provided in § 36.4222.

§ 36.4224 *Veteran's application.* (a) To apply for a guaranteed loan the veteran and the prospective lender shall complete and sign in duplicate Form 1842, Application for Business or Business Realty Loan Guaranty, Form 1842b, if loan does not exceed $5,000, and both that form and Form 1842c, if the loan exceeds $5,000, Supplement to Application for a Business or Business Realty Loan Guaranty (Exhibit A and Exhibit B). Before or after preparing the application, and before submitting it, the lender and the veteran will address a joint inquiry to the regional office or combined facility having jurisdiction of the territory in which the veteran resides whether the proposed borrower is eligible and the amount of his available guaranty.

This information will be supplied on Form 1800, Certification of Eligibility. In addition to the necessary identifying information, they will state whether the property to be encumbered is real or personal, or both, the State and county in which it is situated and the nearest highway. The Administrator will reply on said Form 1800 or otherwise, stating the name and address of an approved appraiser of realty, and in the case of personal property, the person or persons to function as such. When the lender is a bank Form 1845, Appraiser's Check Sheet, may be completed by the bank and forwarded with the application to the agency.

(b) Before forwarding the executed application the prospective lender shall procure a credit report on the borrower and an appraisal of the business or real property by the appraiser designated.

(c) In every case involving real property, the appraiser's report shall indicate the basis, by survey or otherwise, of identifying the property appraised as that to be encumbered to secure the proposed loan. Serial numbers, if any, and other identifying data will be included in a report dealing with personal property to a sufficient extent to identify the property appraised as that which is to be encumbered.

(d) If the supplies, equipment, machinery, or tools purchased are new and bought through normal commercial channels, the invoice price will be considered "the reasonable normal value" provided such price does not exceed the published price less any available trade or other discounts, and does not include any amount representing a premium or other charge for immediate possession or delivery. If the articles are "used" an appraiser will be designated by the Administration as provided in paragraph (a) of this section.

(e) If (1) under §§ 36.4200–36.4251, a mortgage is not required and (2) the lender does not require a mortgage, and (3) the loan otherwise complies with §§ 36.4200 to 36.4251, inclusive, paragraph (c) of this section; paragraph (e) of § 36.4225; paragraphs (a), (d) and (e) of § 36.4230 shall be inapplicable to such loan and any guaranty thereof.

§ 36.4225 *Papers required.* The prospective lender shall submit to the agency the following papers:

(a) Certification of eligibility. (See § 36.4224 (a).)

(b) Loan guaranty certificate. (Form 1841 attached to application.)

(c) Original application for guaranty signed by prospective lender and borrower. (See § 36.4224 (a).)

(d) The credit report. (See § 36.4224 (b) and (d).)

(e) The appraisal report, if required.

(f) Copy of any option agreement, loan agreement or conditional sales agreement used in the transaction.

(g) Proposed loan closing statement of the estimated amounts to be disbursed by the lender for the account of the borrower. (See Form 1861.)

(h) Unless stated in the mortgage, or otherwise in the papers submitted, a statement of the kinds and amounts of insurance to be required to protect the mortgagor, the lender and the Administrator against loss by fire and other hazards, and the estimated premium cost thereof. (See § 36.4215.)

(i) When applicable, the original and copy (both signed) of Form 1862, Application to Amend Loan Guaranty Certificate. (See § 36.4231 (c) and (d).)

§ 36.4226 *Recommendation for approval of guaranty.* The agency shall review the papers to determine whether it will recommend approval of the application for guaranty. Thereupon the agency shall forward all the papers to the appropriate office of the Administrator with recommendation that (a) the Administrator approve the application, or (b) he disapprove it. If disapproval is recommended the reasons therefor shall be stated in writing at the time the papers are forwarded. A recommendation that the application be approved shall be appropriately endorsed on the original of the application.

§ 36.4227 *Administrator's action on application.* (a) Upon receipt of the papers from the agency, the Administrator will determine whether to approve the application. If disapproved he shall return to the proposed lender all papers except the original application for guaranty and the original appraisal report and shall state that the application for guaranty has been denied and the reasons therefor. He shall send a copy of the letter to the veteran and the agency. Upon denial any expenses incurred by the lender or borrower shall be borne by them or either of them as they shall have agreed.

(b) (1) The veteran and the proposed lender, or either, may appeal to the Administrator for review of a denial of the application.

(2) Such appeal may be by letter, or on any prescribed form, and shall be mailed or delivered to central office of the Veterans' Administration within one month after receipt of notice of denial.

(c) (1) If for any reason the loan transaction is not concluded and the same or another lender thereafter wishes to consider making a loan on the same security described in the original application, a supplemental application, if the same lender, or a new application if a different lender, may be submitted. If accompanying it is a statement by the borrower and lender that the condition of the security is substantially the same as when the appraisal report was made, the supplemental or new application may be approved without a new appraisal, if the supplemental or new application shall have been received by the Administrator within three months from the date of the appraisal report.

(2) Without reference to the time limit stated in subparagraph (1) of this paragraph (c) a copy of the appraisal report will be supplied without cost to a prospective new lender, or to the original proposed lender at the currently prescribed price for a copy.

§ 36.4228 *Execution and form of guaranty.* (a) If the Administrator approves the application he shall notify the Agency and the veteran thereof. For the purpose of evidencing the contract of guaranty, he shall execute a loan guaranty certificate, to become effective upon the conditions therein stated. It shall be in substantially the form following:

Veterans' Administration
Finance Form 1841

UNITED STATES OF AMERICA

LOAN GUARANTY CERTIFICATE ISSUED BY VETERANS' ADMINISTRATION

State _____
(Where property is located)

_____
(Lender, exactly as payee's name will appear on note.)

_____
(R. F. D. or Street) (Post Office)

_____
(County) (State)

Number LB_____
(To be filled in by V. A.)

_____
(Borrower-Veteran, exactly as to be signed on note and mortgage.)

_____
(R. F. D. or Street) (Post Office)

_____
(County) (State)

I

A. This certificate shall become effective when the requirements of the statute and regulations have been complied with and the acts certified in part III hereof have been accomplished in compliance with said requirements.

B. When it becomes effective as hereinabove prescribed, this certificate shall obligate the United States of America to pay to the legal holder of the "note" described on the reverse hereof upon his duly filing claim therefor:

1. All or such portion of the maximum amount hereby guaranteed as becomes payable upon the conditions, at the time stated in, and in accordance with the provisions of the Servicemen's Readjustment Act of 1944 (38 U. S. Code 693; 58 Stat. 284), and the regulations issued pursuant thereto which are in effect on the date of this certificate. In no event will the obligation under this certificate exceed $2,000. Subject to the foregoing, this guaranty is for _____ per centum of the principal amount of said "note," but not for more than $_____. In no event will it exceed said percentage of the principal amount.

2. At the expiration of 1 year from the date of the "note," an amount equal to the interest for 1 year at the contract rate on that portion of the indebtedness ("note") originally guaranteed hereby, such payment to be credited on the indebtedness as prescribed by said regulations.

C. Executed on behalf of the United States of America by the Administrator of Veterans' Affairs, through the undersigned authorized agent on this date, to become effective in the manner hereinabove prescribed.

Dated_____

ADMINISTRATOR OF VETERANS' AFFAIRS,

By _____
(Authorized agent)

At _____
(Post Office)

NOTE: If loan is not closed, the proposed lender, or when paid, the holder of the note will mark this certificate "Cancelled," sign thereunder, and return to Veterans' Administration.

II

Description of Property to be "Mortgaged" (Lot and block, section and township, land lot and Land District, etc., and surveyor's

field notes where appropriate, and any other language proper to complete description. Include description of personal property, if any. Describe fully: show serial numbers, if available, or any other means of identification.)

Premises identified as _____
(Name of place, if any,
_____
and R. F. D. Also number or name of nearest
_____
highway. Street and number in city, etc.)
_____ _____
(City, Town, Village) (County, Parish)
_____
(State, District, Territory)

III

CERTIFICATION BY BORROWER AND LENDER

A We hereby warrant that (1) the undersigned borrower names on the reverse hereof executed the note, the face amount of which is $_____ consisting of $_____ principal and $_____ interest, as defined in the regulations; (2) it is dated the _____ day of _____ 19__; (3) borrower(s) and mortgagor(s) delivered it together with the "mortgage" (as defined in the regulations) bearing the same date, and executed to secure payment of said note; (4) said note and mortgage are in the form and type contemplated in the application of the undersigned pursuant to which this loan guaranty certificate was issued; and (5) the principal stated above has been paid to, or according to the directions of, the undersigned borrower(s).

B. The undersigned lender warrants that (1) the same "mortgage," duly executed and witnessed, acknowledged, or proved as required by law, was properly filed, or filed for record, if and as provided by law on the _____ day of _____ 19__, at _____ M; and was given file No. _____ by the Recorder or other proper officials; (2) that it covers the property described on the reverse hereof, which is the same property described, or otherwise identified, or referred to, in the above-mentioned application for guaranty, and in this loan guaranty certificate or in the Application to Amend Loan Guaranty Certificate, if any, applicable to such loan; (3) that no lien superior to said "mortgage" has intervened since the date of said application unless the application indicates it is for a loan to be secured by a second lien as prescribed by the regulations; and (4) if the approved application for guaranty related to a loan wholly or partly to be secured by a hypothecation or a pledge of personal property, such hypothecation or pledge has become effective by appropriate delivery to the lender and no superior lien has intervened since date of application.

(All signatures must be in ink)

(If a corporation)
_____
(Secretary)

Mr.
Mrs.
Miss _____
(Lender(s))

[CORPORATE SEAL]
By: _____
_____
Title (President, vice president, (etc.)

Mr.
Mrs.
Miss _____

Mr.
Mrs.
Miss _____
(Borrower(s))

NOTE 1. If the note is unsecured, references to "mortgage" in paragraphs "A" and "B" above are inapplicable. (See Regulations, §§ 36.4205 and 36.4208.)

NOTE 2. If the local law provides for filing only, not recording, chattel mortgages or similar instruments, paragraph "B" above nevertheless is to be completed. It refers to not only the County Recorder or Clerk, but also to the State Commissioner of Motor Vehicles or other official who keeps motor vehicle mortgage records, and to other similar officials, State or County.

(b) The word principal as used in the Loan Guaranty Certificate and the certification on the reverse thereof means the amount of money actually disbursed to or for the account of the borrower.

§ 36.4229 *Disposition of papers.* The original application for guaranty and the appraisal report will be retained in the files of the Veterans' Administration. The Loan Guaranty Certificate and all other papers will be forwarded to the proposed lender with instructions as to closing the loan in a manner to make the guaranty effective.

§ 36.4230 *Loan procedure after approval of guaranty.* Upon receipt of the papers from the Administrator, the lender shall:

(a) Satisfy himself by title certificate as defined in these regulations as to the title to the real estate to be encumbered and satisfy himself in such reasonable manner as may be available as to the title to personal property to be encumbered.

(b) Cause all necessary instruments to be properly signed and those to be filed, or filed and recorded, properly witnessed, acknowledged or proved so as to entitle them to filing or recordation.

(c) Disburse all funds in substantial accord with the proposed loan closing statement submitted with the application. (See § 36.4225.)

(d) File with the proper State, County or other public official, to be retained where required, or recorded and returned, the "mortgage", and any other appropriate instrument which under the law of the State is required or permitted to be filed or recorded for the purpose of establishing a valid lien as between the parties, or third persons, or of giving actual or constructive notice of the "mortgage", pledge, hypothecation, or other transaction.

(e) Take possession or do any other necessary act to make effective the pledge, or hypothecation, if any.

§ 36.4231 *Report of closing loan.* (a) Within two months after closing the loan and filing with the appropriate public official of the proper instruments, or the taking of other appropriate steps, if any, to make the lien effective, the lender shall complete and forward to the Administrator (using prescribed form, if available) a properly signed report of closing the loan stating that:

(1) The disbursement of the amount named in such report as the principal of the note has been completed by the lender which amount may be not more than 3% in excess of the amount of the proposed loan as stated in the original application for guaranty without complying with the procedure stated in paragraphs (c) and (d) of this section.

(2) Such disbursements were as estimated on the loan closing statement submitted with the application, except as otherwise stated on the reverse side of the loan closing statement. (See § 36.4225.)

(3) The note and the mortgage (or other security instrument) were properly executed stating the date, and the latter was duly acknowledged, witnessed, or proved so that it was legally eligible for filing and for recording if appropriate; the date and hour when, and county in which it was properly filed; and the filing number thereof; or in the case of a pledge or hypothecation the necessary possession, or other steps were taken to make same effective.

(4) The note was dated, (stating the date thereon), and signed by the debtor; the actual principal amount thereof, and the rate of interest provided therein.

(5) The Loan Guaranty Certificate (stating its L-number) was completed, and appropriately signed by the lender and the borrower as therein provided.

(b) If lender is a corporation its corporate seal shall be impressed on such report.

(c) If the transaction to be closed is essentially the same as indicated in the original application except that:

(1) The amount of the loan actually to be made is more than 103% of the amount stated in the application, or (2) personal property to be acquired differs from that described but is for the same use or purpose, and substantially similar in kind, quality and value, Form 1862, Application to Amend Loan Guaranty Certificate, will be completed and signed in duplicate.

(d) The lender will forward the original and copy of Form 1862, Application to Amend Loan Guaranty Certificate, to the "Agency", which will recommend approval or disapproval and forward both to the Veterans' Administration office which issued the Loan Guaranty Certificate. Such office will determine whether to approve the Application to Amend Loan Guaranty Certificate. Such determination will be based on the original application, the evidence submitted in or with the original application, the application to amend, the recommendation of the agency, and such other evidence, if any, as it considers necessary. Notice of action will be given as in the case of original applications. If approved such approval will be appropriately indicated on the original, and such original, duly executed by the Veterans' Administration will be forwarded to the lender. It may be attached to the original Loan Guaranty Certificate to evidence amendment thereof as reflected by such "rider".

§ 36.4232 *New building.* (a) When an application submitted pursuant to the procedure set forth in the foregoing §§ 36.4224 and 36.4225 relates to the guaranty of a loan covering the cost of new building for business purposes, the lender will also furnish the following:

(1) Complete plans and specifications for the proposed new building.

(2) An estimate, prepared by a qualified appraiser, of the fair market value of the property on which the improvements will be situated together with a separate estimate of the increased value of the property which will result from the improvements according to the plans

and specifications. Such estimates of value are in addition to the appraiser's report of the "reasonable normal value."

(3) A copy of the agreement or agreements (which may be unsigned) on which the proceeds of the proposed loan will be disbursed.

(b) Upon the receipt of such papers the agency will follow the procedure prescribed in § 36.4226 and submit same to the Administrator for action under §§ 36.4227 and 36.4228.

(c) The borrower and lender may contract for the payment to the lender of a reasonable sum for the advance of funds during the construction and for the supervision or inspection of the new building.

(d) During the course of building the Administrator shall be entitled, at his expense, to cause such inspection of the construction work at such time or times as he may determine.

(e) The closing report required under § 36.4231 shall be forwarded within two months after completion of the new building and shall be accompanied with a statement by an appraiser on Finance Form 1803a stating that:

(1) He has inspected the building.

(2) The same has been built and completed in substantial conformity with the contract, plans and specifications, if any, and any authorized changes therein, permitted by these regulations.

(3) The increased value of the property as completed and which will be encumbered is substantially in accord with his estimate.

(f) Minor changes may be made in the plans and specifications or substitution of material of substantially equal quality or value, as the creditor, the debtor, and the builder (contractor) may agree if same are not of a major character and in the aggregate do not increase or decrease the cost more than five per centum of the contract price. This does not modify the provisions of § 36.4231. Changes or substitutions other than as herein stated must have the approval of the Administrator.

(g) Upon compliance with the requirements of this section and of §§ 36.4230 and 36.4231 relating to the guaranty becoming effective in other than new building cases, the loan guaranty certificate shall become effective as originally executed (and subject to § 36.4231), or as amended pursuant to approval of application therefor on Form 1862, Application to Amend Loan Guaranty Certificate.

(h) Compliance with paragraph (a) (2) and paragraph (e) of this section is not required in the case of loans not in excess of $500.

§ 36.4233 *When guaranty does not apply.* The guaranty shall not cover any loss sustained by the creditor as the result of:

(a) The acceptance by the mortgagee of a mortgage on any real or personal property, title to which is not merchantable;

(b) Failure of the mortgagee to procure a duly recorded lien of the dignity required by §§ 36.4200–36.4251; or a lien of such dignity by filing, without recording, if lawful, or by pledge or otherwise as required or permitted by applicable law in the jurisdiction where the property is situated at the time the loan is closed;

(c) Failure of the mortgagee to comply with § 36.4215 with respect to insurance;

(d) A tax sale pursuant to execution, or otherwise as provided by law, occasioned by nonpayment of taxes accruing against the mortgaged property after the date of the mortgage if mortgagee fails to give notice to the Administrator of the delinquent taxes at least one month before such sale;

(e) A release by the creditor of the lien on any of the real or personal property securing the guaranteed loan, or any part thereof unless the Administrator consents in writing. Such consent may be granted if the debt is appropriately reduced or on such other terms as the Administrator may determine: *Provided, however,* That if the land is sought by a public authority for highway or other purposes, consent is hereby given for the creditor to release without consideration or for such consideration as he deems proper and without reference to the Administrator, the creditor's lien on land without any buildings thereon if the land so released does not exceed five percent of the acreage encumbered and does not exceed $200 in value. The same consent is hereby given when the release, easement grant, or other instrument is sought by a public or private agency, or person, for the purpose of pipe line, telephone, telegraph or electric transmission lines: *Provided, however,* That when such releases, or grants by the lender for any one or more of the purposes stated in this paragraph (e), or otherwise, with or without specific consent by the Administrator, shall have decreased the security as much as five percent in acreage, or $200 in value, no further releases shall be executed, without consent of the Administrator. If such are executed without consent the amount of the guaranty will be reduced proportionately in the same manner as if the value of the released property were applied as a credit on the unpaid balance of the loan. The provisions of this paragraph (e) will not be construed to affect the guaranty in the event of any grant of title or easement that leaves unaffected the lien on the property affected thereby; or

(f) Sale by reason of foreclosure of a superior lien if the holder of the guaranteed loan secured by a subordinate lien has knowledge of such foreclosure sale as much as 10 days prior thereto and fails to notify the Administrator of the time and place thereof.

(g) The exercise of a right of reverter for breach of restrictive covenants.

Claims Under a Guaranty

§ 36.4234 *Default.* (a) In the event of default, not cured, continuing; (1) three months on an amortized loan which is secured by a mortgage on real property; (2) one month on an unamortized loan unsecured, secured by real or personal property; (3) two months on an amortized loan which is unsecured or secured by a lien on personal property, the creditor may elect to assert claim under the guaranty, and give notice thereof to the Administrator.

(b) If any default occasioned by failure seasonably to pay to the creditor entitled any amount of principal or interest due him under the contract (not cured) shall have persisted as long as six months on the type of loan described in paragraph (a) (1); or three months on the type described in paragraphs (a) (2) or (a) (3), the holder of the indebtedness shall give notice thereof to the Administrator notwithstanding the failure results from payments on advances as provided in § 36.4218 or from any indulgences of the debtor as provided in §§ 36.4235 or 36.4241.

(c) (1) The notice shall state the loan guaranty number if available. If not available other identifying data shall be included, such as date and amount of original obligation, location of Veterans Administration office that issued the guaranty and the property encumbered.

(2) In all cases the notice shall state the name and last known address of the debtor, of the veteran, and of the creditor, and the date and manner of default, and amount past due. If he desires, the creditor may also state his views as to any indulgence that should be extended.

(3) The notice to the Administrator shall be mailed by registered mail or personally delivered in exchange for a written receipt within one month after the expiration of the periods prescribed in paragraph (b) of this section.

§ 36.4235 *Claim on notice of default.* (a) In the notice of default or separately, then, or later, the creditor may make claim under the guaranty.

(b) Then or thereafter the creditor may also give notice of his intention to foreclose the lien or liens securing the indebtedness.

(c) The Administrator may approve the creditor's request, if any, to postpone action to press his claim against the mortgagor, or the property. Such postponement, with the consent of the Administrator, shall not operate to void or diminish the ultimate liability under the guaranty. Consent is hereby given for the lender to agree to deferring or reducing payments for not more than six months on an amortized note but not beyond a date six months beyond its original maturity, and subject to the same limitation, not beyond 20 years from date of the note. In no event shall indulgence or postponement of action authorized by §§ 36.4200–36.4251, impair any right of the creditor to thereafter proceed within the applicable statute of limitations period as if there had been no indulgence or postponement.

§ 36.4236 *Legal action.* (a) The creditor shall not begin action in court, or give notice of sale under a power of sale, until the expiration of 30 days after receipt by the Administrator of the notice of intention to foreclose. Notwithstanding paragraph (a) of § 36.4234 such notice may be given at any time after a default.

(b) (1) If the circumstances require immediate action to protect the interest of the creditor or the Administrator, the Administrator may waive the requirement for prior notice if notice of the action taken is immediately given.

(2) Without limiting the foregoing, the existence of conditions justifying the appointment of a receiver for the property shall be sufficient excuse for beginning suit without prior notice to the Administrator if within ten days after commencement of the suit or action, plaintiff gives the Administrator notice thereof.

(c) Subject to the provisions of this paragraph (c) the right to repossess personal property by virtue of law, or any contract, may be exercised without prior notice to the Administrator, but he shall be given notice thereof within ten days thereafter, and he or the debtor may exercise any rights of redemption or other legal rights available under the law of the jurisdiction within 30 days after such notice, or such longer period, if any, as is provided by such law. In any case the debtor or the Administrator shall be entitled to a good title to and possession of such property so repossessed upon compliance with the conditions of any agreement or upon paying or tendering to the person then in possession thereof within 30 days after such notice, the unpaid balance of the debt with interest to date of tender, and a reasonable sum in addition to cover expenses of the repossession.

§ 34.4237 *Notice of suit and subsequent sale.* (a) Within ten days after beginning suit or causing notice of sale without suit to be given, the creditor shall notify the Administrator thereof by registered mail or personal delivery in exchange for written receipt. The notice shall state whether the foreclosure will be by proceeding in court, or under a power of sale; the type and number of the suit, if any, and the name and location of the court in which pending.

(b) The creditor shall give written notice to the Administrator by registered mail (or delivery) of any foreclosure sale, judicial, or under a power of sale; or of any proposed termination of the rights of any vendee or his immediate or remote grantee (assignee) pursuant to any power or option in a sales contract, or in any other instrument affecting the property which constitutes any security for the obligation guaranteed. Such notice shall be given so that it is received at least thirty days before such sale or other proposed action. It shall state the date, hour and place thereof. The Administrator may bid thereat on the same terms as the lender or other bidders, and may exercise any right the debtor could exercise by virtue of the contract, or any statute, or otherwise. This section is applicable whether the suit, or the sale, or termination, occur before or after payment of the guaranty.

§ 36.4238 *Death of veteran or other owner.* (a) In the event the creditor has knowledge of the death of the veteran, or of any owner of an interest in the encumbered property, or the death of any other person liable on the indebtedness which is guaranteed in whole or in part, the creditor shall take such steps, if any, as are legally necessary, and reasonably available, in the jurisdiction where the encumbered property is situated, to avoid loss of the lien, or impairment thereof, or of all or part of the proceeds of any sale of the property as a result of, or incident to, such death, or of any probate proceedings thereby occasioned in said jurisdiction.

(b) In addition to protecting the lien rights as required by paragraph (a) of this section, the creditor at his discretion may proceed in probate, or otherwise, as may be permissible and feasible in any jurisdiction where administration proceedings are pending or properly may be instituted, or other appropriate legal action taken against assets or persons, to assert any rights, by means of any remedies, therein available to a similarly situated creditor of the decedent.

(c) Upon direction of the Administrator and his designation of an accessible attorney for the purpose, and making appropriate provisions for advancing or paying the costs and expenses of the proceeding, the creditor shall proceed as provided in paragraph (b) of this section: *Provided, however,* That in any case the Administrator may, at his option, proceed immediately in respect to protecting the lien, or asserting claim as contemplated by paragraph (b) of this section, or as to both remedies. If the Administrator takes action, it may be in his name or the name of the creditor as the Administrator may elect and as may be appropriate under applicable law. If action is taken by the Administrator he shall seasonably notify the creditor thereof.

(d) Nothing in this section shall impair any right of set-off or other right or remedy of the Administrator.

§ 36.4239 *Death or insolvency of creditor.* (a) Immediately upon the death of the creditor and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a "trust," or "deposit," or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a set-off and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: *Provided, however,* That any unpaid taxes, insurance premiums, rents, or advances may be paid by the holder of the indebtedness, at his option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This section shall be applicable whether the estate of the deceased creditor is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of creditor;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the creditor, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the creditor's property; or, in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section interest of the note and on the credit balance of the "deposit" mentioned in paragraph (a) shall be set-off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b), and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture or otherwise shall be treated as in the death of an individual as provided in paragraph (a).

§ 36.4240 *Filing claim under guaranty.* Claim under the guaranty may be made on Form 1864, Claim under the Guaranty. Subject to the limitation that the total amount payable under the guaranty shall in no event exceed the original amount thereof, the amount payable under the guaranty shall be the percentage of the indebtedness originally guaranteed applied to the indebtedness (as defined in § 36.4200 (m)) computed as of the date of the claim, and reduced by any payments theretofore made by the United States pursuant to the guaranty.

§ 36.4241 *Options available to Administrator.* Upon receipt of claim under the guaranty or notice of intention to foreclose, the Administrator shall have the following options:

(a) Pay to the creditor not later than one month after receipt of notice of any default, as a partial payment of any actual or potential claim under the guaranty, the amount of principal, interest, taxes, advances or other items in default; and in consideration of such payment the lender shall be deemed to have agreed to refrain from giving effect to any acceleration provisions by reason of defaults prior to the date of notice of default theretofore given: *Provided, however,* That unless the creditor consents, the Administrator may exercise this option once only, and in an amount not exceeding an amount equivalent to the aggregate of principal and interest payable in one year, or not exceeding ten per centum of the original amount of the guaranty, whichever sum is less.

(b) Pay the creditor within one month after receipt of claim the full amount payable under the guaranty without requiring foreclosure, or personal action.

(c) Pay to the creditor promptly after receipt of claim any amount agreed upon, not exceeding the amount due under the guaranty; and notify him to institute appropriate foreclosure proceedings, with, or without, legal action to reduce the debt to judgment, against all or any of the parties liable thereon, and whose names are stated in such notice to the creditor.

(d) If the creditor does not begin appropriate action within two months after receipt of notice to institute action as provided in paragraph (c) above, the Administrator shall be entitled to begin

and prosecute the same to completion in the name of the creditor, or of the Administrator on behalf of the United States, as may be appropriate under applicable laws and rules of procedure: *Provided, however,* That in such event the Administrator shall pay (in advance if required under the practice in the jurisdiction) all court costs, and other expenses, and provide the legal services required.

§ 36.4242 *Refinancing and extension of guaranty.* (a) (1) In addition to the options available under § 36.4238 or § 36.4241, the Administrator, upon receiving (i) notice of intention to foreclose by judicial proceedings or otherwise or to repossess the property, real or personal, or otherwise to terminate the debtor's rights therein, or (ii) a claim for a guaranty, shall be entitled to obtain a refinancing of the indebtedness by delivering notice of intention so to do to the creditor prior to the date upon which otherwise it would be proper for the creditor to proceed. Upon receipt from the Administrator of such notice of intention to obtain a refinancing the creditor's right to proceed shall be suspended for sixty (60) days from the date stated by the Administrator in such notice as the date on which the Administrator received the creditor's notice of claim.

(2) If within the sixty day period prescribed in subparagraph (1) of this paragraph, an offer is received by the creditor to pay, or to purchase the indebtedness at par and interest to date of closing, it shall be the duty of the creditor to forthwith accept such offer, to execute and deliver appropriate instruments without recourse, and to refrain from further proceedings, or repossession, or termination of the debtor's rights.

(3) When (i) a claim for guaranty is filed, or (ii) when a refinancing occurs and an offer is made as contemplated by subparagraphs (1) and (2) of this paragraph, the creditor shall not be entitled to treat payments theretofore made by the debtor, or another, as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(4) Nothing herein shall be construed to require a creditor to lend money for such refinancing, nor to affect guarantees issued prior to the effective date of this amendment.

(b) If refinanced in any manner the Administrator may continue in effect the guaranty granted with respect to the previous loan in such manner as to cover the loan which effected the refinancing.

(c) The Administrator in appropriate cases shall be entitled to exercise any redemption rights of a debtor, or a creditor, in connection with the loan guaranteed, or property rights arising out of, or incident to, such loan.

§ 36.4243 *Subrogation.* (a) Any amounts paid to the creditor by the Administrator pursuant to the guaranty shall constitute a debt due to the United States by the veteran on whose application the guaranty was made; and by his estate upon his death. The Administrator is subrogated to the contract and the lien rights of the creditor to the extent of such payments, but junior to the creditor's rights as against the debtor or the encumbered property, until the creditor shall have received the full amount payable under his contract with the debtor. No partial or complete release by the creditor of the debtor or of the lien shall impair any rights of the Administrator, by virtue of the lien, or otherwise.

(b) The creditor, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town, or state, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the state where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

§ 36.4244 *Future action against mortgagor.* In addition to the amount, if any, collected from the proceeds of the encumbered property by reason of the right of subrogation, the United States will collect from the veteran, or his estate, by set-off against any amounts otherwise payable to the veteran or his estate; or in any other lawful manner, any sums disbursed by the United States on account of the claim pursuant to the guaranty.

§ 36.4245 *Suit by Administrator.* (a) Whenever pursuant to §§ 36.4200–36.4251, the Administrator institutes, or causes to be instituted by the creditor, or otherwise, any suit in equity; action at law; or probate proceedings or the filing of a claim in such; or other legal or equitable proceedings of any character, or any sale, in court or pursuant to any power of sale, the person or persons promptly instituting the same (including the Administrator) shall be entitled to recoup from any proceeds realized therefrom any expenses reasonably incurred, including trustee fees, court costs, and attorney fee paid (or the reasonable value of the services of the trustee and of the attorney, if performed by salaried person or persons, or by the party himself, when proper).

(b) The net proceeds, after setting off such items that may properly be recouped, shall be credited to the indebtedness, or otherwise as may be proper under the facts.

(c) In determining the propriety of recoupment and the amount thereof consideration shall be given to any provisions in the note or mortgage relating to such items, and any amounts actually realized pursuant thereto.

§ 36.4246 *Creditor's records and reports required.* (a) The creditor shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof. Any creditor who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such creditor; not on the debtor, or the United States.

(b) On any delinquent loan the creditor shall report annually on the anniversary of the earliest unremedied default any amount received or disbursed the unpaid balance of principal and accrued interest and any other items chargeable; and the nature of any defaults not already reported. He shall include such additional information, if reasonably necessary and obtainable, which may from time to time be requested by the Administrator.

(c) A proposed lender may be required to submit evidence satisfactory to the Administrator of his equipment for maintenance of adequate records on, and his ability to service, loans if guaranteed pursuant to the provisions of the act and §§ 36.4200–36.4251.

§ 36.4247 *Failure to supply information.* Failure to supply any available information required by §§ 36.4200–36.4251 within two months after request therefor will entitle the Administrator to obtain such information otherwise, and the expense of so obtaining it, plus ten dollars to cover estimated overhead expenses, shall be chargeable to the creditor who failed to comply with such request.

§ 36.4248 *Notice to Administrator.* Any notice required by §§ 36.4200–36.4251 to be given the Administrator shall be sufficient if in writing, and delivered at, or mailed to, the Veterans' Administration office at which the application for guaranty was approved or to any changed address of which the creditor has been given notice or, at the option of the creditor, to the central office of the Veterans' Administration, Washington 25, D. C. If mailed the notice shall be by registered mail when so provided by §§ 36.4200–36.4251.

§ 36.4249 *Right to inspect books.* The Administrator has the right to inspect, at a reasonable time and place the papers and records pertaining to the loan and guaranty. If permission to inspect is declined the Administrator may enforce the right by subpoena under the provisions of Title III of Public No. 844, 74th Congress, 49 Stat. 2031–35, 38 U. S. C. 131, or in any other lawful manner.

§ 36.4250 *Forms, construction to be placed on reference to.* All references in §§ 36.4200–36.4251 to Form 1800, Certification of Eligibility, or to other form numbers shall be construed to include

any revision of the same forms, identified by the same, or by different numbers.

§ 36.4251 *Disqualified lenders and bidders.* Except under unusual circumstances and upon prior approval by the Administrator an application for guaranty of a loan will not be approved if the lender is known to be an employee of the Veterans Administration or of the Agency; and without such approval, an employee of either may not bid at a foreclosure sale of the security for a guaranteed loan.

GUARANTY OR INSURANCE OF LOANS TO VETERANS

AUTHORITY: §§ 36.4300 to 36.4375 issued under 58 Stat. 284, 59 Stat. 626; 38 U. S. C. 693.

NOTE: Those requirements, conditions, or limitations which are expressly set forth in the act are not restated herein and must be taken into consideration in conjunction with §§ 36.4300 to 36.4375, inclusive.

§ 36.4300 *Applicability of §§ 36.4300 to 36.4375, inclusive.* Sections 36.4300 to 36.4375, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication thereof in the FEDERAL REGISTER, and shall be applicable to such loans previously guaranteed to the extent that no legal rights vested thereunder are impaired.

§ 36.4301 *Definitions.* Wherever used in the act or §§ 36.4300 to 36.4375, inclusive, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

(a) "Act"—Public Law 346, 78th Congress (58 Stat. 284), cited as the "Servicemen's Readjustment Act of 1944", as amended by Public Law 268, 79th Congress (59 Stat. 626) (38 U. S. C., Sup., 693 et seq.).

(b) "Administrator"—the Administrator of Veterans' Affairs, or any employee of the Veterans' Administration authorized by him to act in his stead.

(c) "Alterations"—any structural changes or additions to existing realty or any modifications that increase the usefulness or efficiency of equipment or machinery used for farm or business purposes.

(d) "Combination loan"—any obligation the proceeds of which are expended for more than one purpose which are severally definable as "real estate loans" and "non-real estate loans".

(e) "Conducted by a veteran" (section 502)—personally performed, directed or operated by him on a full or part-time basis, with or without hired labor, not solely operated by a tenant or an employee who does not receive the direction and supervision of the veteran.

(f) "Cost"—the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

(g) "Date of first uncured default"—the due date of the earliest payment not fully satisfied by the proper application or available credits or deposits.

(h) "Default"—failure of a borrower to comply with the terms of a loan agreement.

(i) "Designated appraiser"—a person approved in writing by the Administrator to fix the value of property, or a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in Title III of the act. Such an appraiser is not an agent of the Administrator in any case.

(j) "Dwelling"—any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership thereof.

(k) "Economic readjustment"—means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable him to meet his obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

(l) "Engaging in business" or "pursuing a gainful occupation"—(section 503)—active participation in the operation, management and supervision of an enterprise or practice of a profession or trade, on a full- or part-time basis.

(m) "Farm" any real estate suitable or adaptable for farming operations.

(n) "Farming operations"—activities justifying capital expenditures which involve production of crops, livestock or other agricultural commodities and the marketing thereof and their products in amounts in excess of the subsistence needs of the operator.

(o) "Federal agency" as used in section 505 (a) of the act, means any Executive Department, administrative agency, or corporate instrumentality of the United States Government the stock of which is wholly owned by the United States.

(p) "Full disbursement"—payment by a lender of the entire proceeds of a loan for the purposes described in the report of the lender in respect of such loan to the Administrator either (1) by payment to those contracting with the borrower for such purposes, or (2) by payment to the borrower, or (3) by transfer to an account against which he can draw at will, or (4) by transfer to an escrow account, or (5) by transfer to an earmarked account if (i) the amount thereof is not in excess of ten percent of the loan, or (ii) the loan is one submitted by a lender of the class specified in section 500 (d) or section 508 of the act.

(q) "Guaranty"—the obligation of the United States, assumed by virtue of Title III of the act, to repay a specified percentage of a loan upon the default of the primary debtor.

(r) "Holder"—the lender or any subsequent assignee or transferee of the guaranteed or insured obligation.

(s) "Home"—place of residence.

(t) "Improvements"—any alteration that improves the property for the purpose for which it is occupied, operated, or employed.

(u) "Indebtedness"—the unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4375, inclusive, which have been paid and debited to the loan account.

(v) "Insurance"—the obligation assumed by the United States to indemnify a lender to the extent specified in §§ 36.4300 to 36.4375, inclusive, for any loss incurred upon any loan insured under section 508 of the act.

(w) "Insurance account"—the record of the amount available to a lender or purchaser for losses incurred on loans insured under section 508 of the act.

(x) "Lender"—the payee or assignee or transferee of an obligation at the time it is guaranteed or insured.

(y) "Lien"—any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

(z) "Non-real estate loan"—any obligation incurred for the purchase, alteration, improvement or repair of personal property; or any loan which is not a real estate loan.

(aa) "Purchase price"—the entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied thereto.

(bb) "Real estate loan"—any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4375, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements or repairs thereon required by §§ 36.4300 to 36.4375, inclusive, to be secured by a lien on such property or is so secured.

(cc) "Reasonable value"—that figure which represents the amount a designated appraiser, unaffected by personal interest or prejudice, would recommend as a proper price or cost to a prospective purchaser, whom the appraiser represents in a relationship of trust, as being a fair price or cost in the light of prevailing conditions.

(dd) "Repairs"—any alteration of existing realty, machinery, or equipment which is necessary or advisable for protective, safety, or restorative purposes.

(ee) "Residential property"—(1) any improved real property or leasehold estate therein as limited by §§ 36.4300 to 36.4375, inclusive, the primary use of which is for occupation as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof; or (2) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected.

(ff) "Repossession-repossessed"—recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make

further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

General Provisions

§ 36.4302 *Computation of guaranties or insurance credits.* (a) The sum of all guaranties and credits to insurance accounts covering loans made to an individual veteran shall not exceed $2,000 for non-real estate loans, nor $4,000 for real estate loans, nor a proper proportion of such maxima on loans of both types or any combination thereof.

(b) Excepting loans fully guaranteeable under section 505 (a), not more than 50% of the original principal amount of any loan may be guaranteed. The maximum credit to the insurance account of a lender relative to any insured loan shall be 15% of the original principal amount of such loan or the amount thereof which could be guaranteed, whichever is less.

(c) The following formula shall govern the ascertainment of the amount of the guaranty benefit which is available to an eligible veteran:

(1) To compute unused guaranty, add to realty guaranty used for prior loans twice the non-realty guaranty used. Subtract this sum from $4,000. The sum remaining is, subject to the limitations of the act, the amount of realty guaranty available. The non-realty guaranty available is one-half of said sum.

(2) To compute the amount of guaranty on combination loans:

Allow not to exceed 50% of the cost of the real estate but not to exceed the maximum real estate guaranty available;

If any real estate guaranty remain available, not to exceed one-half thereof may be allowed on the non-real estate portion of the loan.

(d) For the purpose of computing the remaining guaranty or insurance benefit to which a veteran is entitled, loans guaranteed prior to the effective date of §§ 36.4300 to 36.4375, inclusive, shall be taken into consideration as if made subsequent thereto.

(e) A loan made by an insurable lender may be either guaranteed or insured at the option of the borrower and the lender: *Provided,* That if the Administrator is not advised of the exercise of such option at the time the loan is reported pursuant to § 36.4303 such loan will not be eligible for insurance.

(f) A guaranty is reduced or increased pro rata with any reduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty.

(g) The amount of any guaranty or the amount credited to a lender's insurance account in relation to any insured loan shall be charged against the original or remainder of the guaranty benefit of the borrower. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed or insured indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum amount of guaranty or insurance legally available to a veteran shall have been granted, no further guaranty or insurance is available to him.

§ 36.4303 *Reporting requirements.* (a) With respect to loans automatically guaranteed under section 500 (a) of the act, evidence of the guaranty will be issuable to a lender of a class described under section 500 (d) of the act if the loan is reported to the Administrator within 30 days following full disbursement, and upon the certification of the lender that:

(1) There has been no default thereunder;

(2) An construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Administrator have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based, and any deviations or changes of identity in said property have been approved as required in § 36.4304 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of the act and of the regulations concerning guaranty or insurance of loans to veterans;

Provided, however, That if the report shows that any part of the proceeds of a loan is held in escrow or earmarked as provided in the definition of "full disbursement" contained in the regulations concerning guaranty or insurance of loans to veterans, approval of the loan for guaranty or insurance shall be evidenced by a certificate of commitment.

(b) Loans made pursuant to section 505 (a) or section 508 of the act although not entitled to automatic guaranty or insurance thereunder, may, when made by a lender of a class described in section 500 (d) thereof, be reported for issuance of a guaranty or of an insurance credit, or a certificate of commitment as provided in paragraph (a) of this section.

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in section 500 (d) of the act shall be submitted to the Administrator for approval prior to closing. Section 500 (d) lenders shall have the optional right to submit any loan for such prior approval. The Administrator upon determining any loan so submitted to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 30 days thereafter of a supplemental report showing that fact and:

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

(3) That any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Administrator have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based and that any deviations or changes of identity in said property have been approved as required by § 36.4304, and

(4) That the loan conforms otherwise with the applicable provisions of the act and the regulations concerning guaranty or insurance of loans to veterans.

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: *Provided, nevertheless,* That if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Administrator, notwithstanding the report is received after the date otherwise required.

(f) Evidence of a guaranty will be issued by the Administrator by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. No evidence of a guaranty or insurance will be issued on any transaction unless the lender, the veteran, and the loan are shown to be eligible, and any unused, and unreserved entitlement of a veteran shall be applied to loans in the order in which they are reported to the Veterans' Administration. On and after the effective date of this section, unused certificates of eligibility issued prior to March 1, 1946 shall be void.

§ 36.4304 *Deviations; changes of identity.* (a) A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Administrator. Any deviation in excess of 5 percent or change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: *Provided,* That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identity of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Administrator.

(b) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty, or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the amount of the loan stated in the final loan report.

(c) Any amounts which are disbursed for an ineligible purpose shall be excluded in computing the amount of the guaranty or insurance credit.

§ 36.4305 *Partial disbursement.* In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: *Provided:*

(a) A report of the loan is submitted to the Administrator within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Administrator.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan,

(c) The Administrator determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented,

(d) There has been full compliance with the provisions of the act and of the applicable regulations up to the time of the last disbursement.

Provided further, however, That in the case of a construction loan when the construction is not fully completed the lender shall further certify as follows:

(e) The amount disbursed out of the proceeds of the loan and any other payments made by or on behalf of the veteran to the builder or contractor do not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated;

(f) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

(g) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

§ 36.4306 *Refunding of outstanding indebtedness.* (a) The proceeds of a guaranteed or insured loan if otherwise eligible may be used to refinance existing obligations of the veteran-applicant or to repay advances made by him provided:

(1) The obligation was incurred or the advance made within 60 days prior to the date of application to the lender, or

(2) The obligation represents the balance due on a land sale contract (see § 36.4354), or

(3) The obligation represents the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or

(4) Such obligation is eligible under section 507 of the act.

(b) If any part of an obligation which is refinanced with the proceeds of the loan submitted for guaranty or insurance is ineligible that portion of the loan which serves to refinance such part of the obligation shall be excluded in computing the amount of guaranty or credit to the insurance account of the lender in respect of that loan.

§ 36.4307 *Joint loans.* (a) The fact that other parties (1) will have an undivided interest with the veteran in the ownership of property, or (2) have joint and several liability with the veteran on a guaranteed or insured obligation shall not make a loan ineligible, but the amount of the loan upon which the guarantee or insurance shall be based in the case of a real estate loan, shall be proportional to the value of the veteran's interest in the property or estate; or, in the case of a non-real estate loan, shall be the reasonable value to the veteran of his participating share in or on his individual contribution to the enterprise. If the property so purchased is an interest in real property or a leasehold estate, the obligation shall be secured by a first lien (or by a second lien if under section 505) on the entire property or estate, or if an interest in personalty, shall be secured to the extent "legal and practicable."

(b) If two or more eligible veterans are joint-obligors and request a guaranty or credit to an insurance account, the total amount guaranteed or credited shall be charged equally to their respective guaranty benefits, or apportioned otherwise as they may designate. Regardless of the number of eligible veterans who are joint-obligors the maximum guaranty or insurance shall be calculated as if the obligation were several.

(c) Notwithstanding the interest of a veteran's spouse, as such, the full amount of the loan my be the basis for guaranty or insurance. If both spouses be eligible veterans, the maximum proportion of the loan which may be guaranteed or insured will not be increased, but either or both may, within such limitations, utilize available guaranty or insurance entitlement.

§ 36.4308 *Transfer of title by borrower.* The conveyance of, or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Administrator, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

§ 36.4309 *Amortitzation.* (a) All loans the maturity date of which is beyond 5 years from date of loan, or date of assumption by the veteran, shall be amortized. The schedule of payments thereon shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan, except that on farm real estate loans the principal repayments may be postponed for not more than two years from the date of the loan. The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan such installment may be for an amount not in excess of five per centum of the original principal amount of the loan. The limitations imposed herein on the amount of the final installment shall not apply in the case of any loan extended pursuant to § 36.4314 (a).

(b) Any plan of repayment on loans required to be amortized which does not provide for approximately equal periodic payments shall not be eligible unless approved by the Administrator.

(c) Every guaranteed or insured loan shall be repayable within the estimated economic life of the property securing the loan.

(d) Subject to paragraph (a) of this section, any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in the act shall automatically fall due on such date. (See § 36.4334.)

§ 36.4310 *Prepayment.* The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or $100, whichever is less, provided that any prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be re-applied for the purpose of curing or preventing any subsequent default. The initial four percent payment made by the Administrator may be considered a prepayment for the purposes of this section.

§ 36.4311 *Interest rates.* (a) Excepting non-real estate loans insured under section 508 of the act, the interest rate on any loan guaranteed or insured wholly or in part may not exceed four per centum per annum on the unpaid principal balance.

(b) On a non-real estate insured loan the interest rate may not be in excess of:

(1) Discount note—An amount equivalent to $3 discount per $100 of original face amount of a 1-year note, payable in equal monthly installments, or

(2) Interest bearing note—5.70 per centum per annum on the unpaid principal balance.

(c) Interest in excess of the applicable rate specified in the act shall not be payable on any advance, or in the event of any delinquency or default: *Provided,* That a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

§ 36.4312 *Closing costs.* (a) Any costs or expenses incurred in closing a loan or

financing a purchase and normally required to be paid by a purchaser or lienor incident to the making of a loan under local lending customs may be included in the amount paid out of the proceeds of a guaranteed or insured loan, except that no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically or otherwise: *Provided*, That a lender shall not be precluded from making a customary charge in construction loan cases for supervision and inspection during the course of construction. Loans guaranteed or insured pursuant to section 505 (a) of the act shall not exceed 20% of the purchase price as defined in § 36.4301 (aa).

(b) Brokerage or other charges shall not be made against the veteran for obtaining any guaranty, or insurance under section 508 of this title, nor shall any premiums for insurance on the life of the borrower be paid out of the proceeds of a loan, except that there may be paid out of the proceeds of a non-realty loan for farm or business purposes premiums on insurance not in excess of the amount of the loan and for a period not in excess of 2 years, or the term of the loan, whichever is less.

(c) Any commission or other consideration paid or payable by the veteran to a sales broker or another, as agent of the veteran or otherwise, shall not be considered as acquisition or closing costs and shall be treated as part of the purchase price for the purpose of determining that the purchase price of the property is not in excess of the reasonable value thereof, and when so treated any such commission or consideration may be paid out of the proceeds of the loan.

§ 36.4313 *Advances and other charges.* (a) A holder may include in a guaranteed or insured indebtedness or charge against the proceeds of the security therefor, any reasonable expense necessary and proper for the maintenance or repair of the security or for the payment of accrued taxes, special assessments, ground or water rent, or premiums on fire or other casualty insurance against loss of or damage to such property. Any expenses other than those expressly permitted may be debited against the indebtedness or deducted from the proceeds of the sale of the security if lawfully authorized by the loan agreement: *Provided*, That such other expenses shall not be considered in determining the amount payable by the Administrator, except as provided in paragraph (b) of this section.

(b) The holder may charge (1) against the proceeds of the sale of the security, (2) against gross amounts collected, (3) in any accounting to the Administrator after payment of a claim under the guaranty, (4) in the computation of a claim under the guaranty, subject to § 36.4321 (a), or (5) in the computation of an insurance loss, any of the following items actually paid:

(i) Any expense which is reasonably necessary for preservation of the security,

(ii) Court costs in a foreclsoure or other proper judicial proceeding involving the security,

(iii) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security,

(iv) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness,

(v) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $250, whichever is less,

(vi) Any other expense or fee that is approved in advance by the Administrator.

(c) Nothing in this section shall be construed to authorize any charge against the debtor unless he otherwise be liable therefor.

§ 36.4314 *Extensions and re-amortizations.* (a) The terms of repayment of any loan may by written agreement between the holder and the debtor be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a prepayment pursuant to § 36.4310, the balance of the indebtedness may, by written agreement between the holder and the debtor, be re-amortized, provided the re-amortization schedule will result in full repayment of the loan within the original maturity.

(c) In the event an additional loan is proposed to be made pursuant to § 36.4351 for the repair, alteration or improvement of real property on which there is an existing loan guaranteed or insured under the act, the terms of repayment of the prior loan may, by written agreement between the holder and the debtor, be recast to combine the schedule of repayments on the two loans, provided the entire indebtedness is repayable within the permissible maximum maturity of the original loan.

(d) Unless the prior approval of the Administrator has been obtained, any extension or re-amortization agreed to by a holder which relieves any obligor from liability will release the liability of the Administrator under the guaranty or insurance on the entire loan.

(e) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a re-amortitzation or extension of a guaranteed or insured loan.

§ 36.4315 *Reporting of defaults.* The holder of any guaranteed or insured loan shall give notice to the Administrator within 45 days after any debtor:

(a) is in default by reason of non-payment of any installment for a period of 60 days from the date of first uncured default (see § 36.4301 (g)); or

(b) is in default by failing to comply with any other covenant or obligation of such guaranteed or insured loan which failure persists for a continuing period of 90 days after demand for compliance therewith has been made, except that if the default is due to non-payment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 180 days.

§ 36.4316 *Continued default.* (a) In the event any failure of the debtor to discharge his obligations under the loan continues for a period of three months, or for more than one month on an extended loan or on a term loan, the holder may at his option, then or thereafter, submit a claim for payment of the guaranty. He may also then or thereafter give the notice prescribed in § 36.4317.

(b) A claim for the guaranty, or the notice prescribed in § 36.4317 may be submitted prior to the time prescribed in paragraph (a) of this section in any case where any material prejudice to the rights of the holder or to the Administrator or hazard to the security warrants more prompt action.

§ 36.4317 *Notice of intention to foreclose.* (See also § 36.4319.) Except upon the express waiver of the Administrator, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Administrator of a notice of intention to take such action: *Provided*, That (a) immediate action may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment), and (b) any right of a holder to repossess personal property may be exercised without prior notice to the Administrator; but notice of any such action taken shall be given by registered mail to the Administrator within ten days thereafter.

§ 36.4318 *Refunding of loans in default.* (a) Upon receiving a notice of default or a claim for a guaranty or a notice under § 36.4317, the Administrator may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefor to the Administrator or to another designated by him upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4325.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Administrator may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

§ 36.4319 *Legal proceedings.* (a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Administrator were a party to the

proceeding, shall deliver to the Administrator, by mail or otherwise, by making such delivery to the loan guaranty officer at the office which granted the guaranty or the insurance, or other office to which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale under power by a holder or one acting at his behest (e. g. trustee or public official) shall be similarly delivered to the Administrator at or before the date of first publication, posting, or other notice, but in any event, except in emergency or when waived by the Administrator, not less than ten days prior to date of sale. Copy of any other notice of sale served on the holder or of which he has knowledge shall be similarly delivered to the Administrator, including any such notice of sale under tax or other superior lien or any judicial sale.

(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be applicable in any proceeding to which the Administrator is a party, after his appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Administrator is a party, original process and any other process prior to appearance, proper to be served on the Administrator, shall be delivered to the loan guaranty officer of the regional office of the Veterans' Administration having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the cause by his authorized attorney.

(e) After appearance of the Administrator by attorney all process and notice otherwise proper to serve on the Administrator before or after judgment, if served on his attorney of record shall have the same effect as if the Administrator were personally served within the jurisdiction of the court.

(f) If following a default the holder does not begin appropriate action within 2 months after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his option intervene in, or begin and prosecute to completion any action or proceeding, in his name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by him, or properly taxed against him, in any such action to which he is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies or defenses, in law or in equity, available to the Administrator.

§ 36.4320 *Sale of security.* (a) If any security for a guaranteed or insured loan is to be disposed of through a private sale, the amount to be realized therefrom shall be reported in the notice required under § 36.4317, or by subsequent written advice at least 10 days in advance of the sale, and the Administrator may thereupon either assent to such sale, or upon agreement to indemnify the holder to the extent of any increased or resultant loss consequent thereon, may establish an upset price which shall govern in adjusting the rights and liabilities of the holder and the Administrator.

(b) Upon receipt of notice of a public sale to liquidate any security for a guaranteed or insured loan the Administrator may appraise such security and notify the holder in advance of the sale of the amount required to be credited to the indebtedness on account of the sale thereof, subject to the following alternatives:

(1) If a third party acquires the security at the sale the holder shall credit against the indebtedness the net proceeds of the sale, or the amount specified by the Administrator, whichever is the greater.

(2) If the holder acquires the security at the sale he shall credit the indebtedness for the purpose of accounting to the Administrator, the amount specified by the Administrator, paying over to the Administrator, the excess if any by which such credit exceeds the sum required to satisfy the indebtedness and may further dispose of the security in accordance with the rights he derived through the sale, or he may within 15 days after the date of the sale advise the Administrator of his election to transfer or convey the security, or the rights therein derived through the sale, to the Administrator in return for payment of the specified amount required to be credited to the indebtedness, or the amount required to satisfy the indebtedness, whichever is the less.

(3) Upon receiving repayment in full of all payments made on the guaranty or insurance, or upon such other terms as may be agreed, the Administrator shall deliver appropriate release of all rights in the property accruing by reason of the guaranty or insurance of the loan.

(c) When a debtor proposes to transfer or convey any security or other property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition or relinquishment of the obligation or of the security the consent of the Administrator to the terms of such proposal shall be obtained in advance of such transfer or conveyance. Prior to giving such consent the Administrator shall appraise the property which is to be transferred or conveyed and shall fix the amount which the holder shall be required to allow for the value of any such property in any subsequent accounting to the Administrator for a surplus resultant after payment of a guaranty, or in computing the net loss on a loan insured under section 508. The holder shall be entitled to elect to transfer or convey the property to the Administrator upon payment by the Administrator of the stated valuation up to the amount thereof required to satisfy in full the remaining balance of the indebtedness. Such election must be exercised by the holder within 15 days after receiving the transfer or conveyance of the property or he will be deemed to have elected to retain the property and to allow the required credit.

(d) If under the applicable State law, or decree of foreclosure or order of sale a minimum acceptable bid is provided, and the maximum bid for the property fails to equal such amount at the sale or if the court refuses to confirm a foreclosure sale, the creditor may submit to the Administrator a proposal for an agreement as to value of such property for purposes of a claim for guaranty, or insurance, or for accounting to the Administrator in respect of the property pursuant to § 36.4321 (b) and (c). The Administrator thereupon shall proceed in the manner provided in paragraph (c) of this section and fix the value of the property. The value so fixed by the Administrator shall govern as between the Administrator and the creditor if the creditor elects to proceed with further sale of such property pursuant to said decree or order. If the creditor does not so elect the rights and liabilities of all parties will remain unaffected by such submission.

§ 36.4321 *Computation of guaranty claims; subsequent accountings.* (a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure, or (2) in non-judicial foreclosures the date of publication of the first notice of sale, or (3) in cases in which the security is repossessed without a judgment, decree or foreclosure the date the holder repossesses the security, or (4) if no security is available or no repossession takes place, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of the claim, shall be reported to the Administrator incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. He shall forthwith pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.

(d) Any allowable expenditures or costs paid subsequent to the date of computation of the claim and before accounting to the Administrator, and accrued interest from the date of claim to the date of sale, may be deducted by the holder from the proceeds of the sale of the security, or may be included in the accounting to the Administrator on such loan.

§ 36.4322 *Computation of indebtedness.* In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4318 (a), or other accounting to the Administrator, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

§ 36.4323 *Subrogation and indemnity.* (a) The Administrator shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under his contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Administrator with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered him for that purpose, evidencing any payment received from the Administrator and the Administrator's resulting right of subrogation.

(c) The Administrator shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Administrator may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of the act shall constitute a debt owing to the United States by such veteran.

§ 36.4324 *Release of security.* (a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without the prior approval of the Administrator, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of $300, *Provided,* That the aggregate of the reduction in the original value of the security resultant from such releases without the Administrator's prior approval does not exceed $300.

(b) Holder may release from the lien personal property including crops without the prior approval of the Administrator.

(c) Except upon full payment of the indebtedness or upon the prior approval of the Administrator, the holder shall not release a lien under paragraphs (a) or (b) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(d) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(e) The holder shall notify the Administrator of any such release or substitution of security within 30 days after completion of such transaction.

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Administrator shall release the obligation of the Administrator as guarantor or insurer, except when such act or omission consists of: (1) Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or, (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 and if after receiving such notice, the Administrator shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Administrator indicates in such notice to the holder.

(g) Nothing herein shall be construed to restrict the expenditure of working capital, the processing of materials, or the sale of merchandise or inventory in the ordinary course of business.

(h) Increase derived from livestock which constitutes security is not required to be included in the lien, and when so included may be disposed of by agreement between holder and debtor without advising the Administrator of such disposition.

§ 36.4325 *Partial or total loss of guaranty or insurance.* (a) There shall be no liability on account of a guaranty or insurance with respect to a transaction in which a signature to either the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the discharge or certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

Except as to a claimant on a negotiable instrument who acquired same before maturity, for value, and without notice, any material misrepresentation or fraud by the lender, or by the holder, or the agent of either, in procuring the guaranty, the insurance credit, or a transfer thereof, shall relieve the Administrator of liability.

(b) In taking security required by the act and the regulations in this subpart, a holder shall obtain the required lien on property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated, and if any holder fails in this respect or fails to comply with the act and the regulations in this subpart with respect to:

(1) Obtaining and retaining a lien of the dignity required on all property reported as being encumbered to secure a loan,

(2) Inclusion of power to substitute trustees (§ 36.4327),

(3) The procurement and maintenance of insurance coverage (§ 36.4326),

(4) Advice to Administrator as to default (§ 36.4315),

(5) Notice of intention to begin action (§ 36.4317),

(6) Notice to the Administrator in any suit or action, or notice of sale (§ 36.4319),

(7) The release, conveyance, substitution or exchange of security, except as provided in the regulations in this subpart,

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted (§ 36.4328),

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

no claim on the guaranty or insurance shall be paid on account of the loan with respect to which such failure occurred until the loss, if any, resulting from such failure is determined. The burden shall be upon the holder to establish that such

loss or any part thereof is not attributable to such failure. If so established, the amount payable, if any, shall be calculated as though the amount of the loss attributable to such failure had been paid on the indebtedness. If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4318 (a), the failure to comply with the regulations as provided in this paragraph is discovered and the Administrator claims that a loss resulted the transferor or person to whom such payment was made shall reimburse the Administrator except as to so much of the loss as such person or transferor establishes was not attributable to such failure.

§ 36.4326 *Hazard insurance.* The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. All monies received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.

§ 36.4327 *Substitution of trustees.* In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated.

§ 36.4328 *Capacity of parties to contract.* Nothing in §§ 36.4300 to 36.4375, inclusive, shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

§ 36.4329 *Geographical limits.* Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan, and the principal place of business of any enterprise in connection with which a loan is obtainable under sections 503 or 507 of the act, shall be situated within the United States, defined in the act as the several States, territories and possessions and the District of Columbia.

§ 36.4330 *Accounting records.* (a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof. Any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The Administrator has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a holder pertaining to loans guaranteed or insured by the Administrator.

§ 36.4331 *Disqualification of lenders.* Whenever a loan guarantee officer finds with respect to loans guaranteed or insured under the act that any lender or holder has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government, he may temporarily suspend the right of such lender or holder to secure guaranty or insurance on loans under Title III of the act pending reference of the matter to the central office for investigation or action as may be necessary and appropriate. Upon a proper hearing at which the lender or holder shall have an opportunity to appear in person or by counsel, or both, and to introduce evidence, the Administrator, if he deems sufficient cause has been shown therefor, may decline for a specified period to issue further evidence of guaranty or insurance.

§ 36.4332 *Delivery of notice.* Any notice required by §§ 36.4300 to 36.4375, inclusive, to be given the Administrator must be in writing, and delivered, by mail or otherwise, to the Veterans' Administration office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran obligor and the file number assigned to the case by the Administrator, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by registered mail when so provided by §§ 36.4300 to 36.4375, inclusive. This section does not apply to legal process (see § 36.4319).

§ 36.4333 *Satisfaction of indebtedness.* Upon full satisfaction of a guaranteed loan by payment or otherwise it shall be the duty of the holder to cancel the endorsement, if any, of the Administrator; and forthwith inform the Administrator of such cancellation. In the event the Administrator's liability thereon is evidenced by an instrument separate from the instrument evidencing the debtor's obligation, the instrument evidencing the obligation of the Administrator shall be returned to the Veterans' Administration office issuing same, or to the central office, with the holder's cancellation or endorsement of release thereon.

§ 36.4334 *Incorporation by reference.* Regulations issued under the act, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder shall govern the rights, duties and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

§ 36.4335 *Supplementary administrative action.* Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning guaranty or insurance of loans to veterans, the Administrator, within the limitations and conditions prescribed in the act, may take such action as may be necessary or appropriate to relieve any undue prejudice to a debtor, holder, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such requirement, condition or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under § 36.4342 of the regulations concerning guaranty or insurance of loans to veterans.

§ 36.4336 *Eligibility of loans; reasonable value requirements.* No loan is guaranteeable or insurable the proceeds of which have been expended or will be expended for property, or for construction, alterations, repairs or improvements, the purchase price or cost of which is in excess of the reasonable value of the same as determined by a proper appraisal made by an appraiser designated by the Administrator. Nor in any case in which a lien is required by §§ 36.4300 to 36.4375, inclusive, may such purchase price or cost when added to the amount remaining unpaid on obligations secured by prior liens, be in excess of the reasonable value of the subject property as so improved.

§ 36.4337 *Security; non-real estate loans.* To the extent legal and practicable under customary business practice, all loans made for the purchase, alteration, improvement, repair or production of tangible personal property will be secured by such property in the usual legal form employed in the locality in transactions where rights in personal property are reserved as security for the payment of its purchase price or for the cost of work done or materials applied thereto.

§ 36.4338 *Death or insolvency of holder.* (a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Administrator, all sums then standing as a credit balance in a trust, or deposit, or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a set-off and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that dated will be reduced by the amount of such credit balance: *Provided*, That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at his option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;
(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;
(3) Appointment of a general or ancillary receiver for the holder's property; or in any case
(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraphs (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a).

§ 36.4339 *Qualification for designated appraisers.* (a) To qualify for approval as a designated appraiser, an applicant must show to the satisfaction of the Administrator that his character, experience, and the type of work in which he has had experience for at least five years, qualifies him competently to appraise and value within a prescribed area the type of property to which the approval relates.

§ 36.4340 *Restriction on designated appraisers.* A designated appraiser shall not make an appraisal, excepting of alterations, improvements or repairs to real property entailing a cost of not more than $1,000, if such appraiser is an officer, director, trustee, employer or employee of the lender, contractor, or vendor: *Provided,* That appraisals of non-real estate loans may be made by an officer, director, trustee, employer or employee of a lender of a class specified under sections 500 (d) or 508 of the act.

§ 36.4341 *Suspension or removal of appraisers.* Upon it appearing that an appraiser designated by the Administrator is not qualified to make appraisals of the type for which he was appointed, or has engaged in any practice detrimental to the interests of the veteran, the lender, or the Government, he may be suspended or removed by the Administrator: *Provided,* That such action shall not prejudice the guaranty or insurance right of a lender who has in good faith acted in reliance upon a designation of such appraiser prior to receiving notice of such suspension or removal.

§ 36.4342 *Delegation of authority.* (a) Except as hereinafter provided each employees of the Veterans' Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to the guaranty or insurance of loans and the rights and liabilities arising therefrom, including but not limited to, the adjudication and allowance, disallowance, and compromise of claims, the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or acquisition of loans, the management and disposition of secured and unsecured notes and other property, and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of section 509 (a) of the act. Incidental to the exercise and performance of the powers and functions hereby delegated each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Administrator evidence of guaranty or of insurance credits and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental or other disposition of real or personal property, or of any right, title or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments and releases; and to approve disbursements to be made for any purpose authorized by Title III of the act.

(b) Designated positions:

Assistant Administrator for Finance
Director, Loan Guaranty Service
Assistant Director, Loan Guaranty Service
Division Chief, Loan Guaranty Service
Assistant Division Chief, Loan Guaranty Service
Chief, Loan Guaranty Division
Assistant Chief, Loan Guaranty Division
Loan Guaranty Officer
Assistant Loan Guaranty Officer

(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Administrator under section 504 or section 508 (b) of the act or to sue, or enter appearance for and on behalf of the Administrator or confess judgment against him in any court without his prior authorization; or, (2) to include the authority to exercise those powers reserved to the Administrator under §§ 36.4335, 36.4343 and 36.4344, or those delegated to the Assistant Administrator for Finance, or Director, Loan Guaranty Service, under § 36.4343 or § 36.4344 of the regulations concerning guaranty or insurance of loans to veterans.

§ 36.4343 *Loans which may not be processed automatically.* (a) Any loan which is (1) related to an enterprise in which more than ten individuals will participate; or (2) to be made for the purchase or construction or residential units in any housing development, cooperative or otherwise, the title to which development or to the individual units therein is not to be held directly by the veteran participants, or which contemplates the ownership or maintenance of more than three units or of their major appurtenances in common; or (3) to be made for business or farm purposes in the amount of $25,000 or more, to be eligible for guaranty or insurance shall require prior approval of the Administrator, the Assistant Administrator for Finance or of the Director, Loan Guaranty Service, who may issue such approval upon such conditions and limitations as he may deem appropriate, not inconsistent with the provisions of the act, and subject to §§ 36.4301, 36.4302, 36.4317, 36.4319 to 36.4330 inclusive, 36.4332, 36.4333, 36.4335, 36.4336, 36.4340, 36.4345, 36.4350, 36.4352, 36.4354, 36.4360, and, as to insured loans, §§ 36.4370 to 36.4375 inclusive.

(b) The issuance of such approval with respect to a residential development under paragraph (a) (2) of this section also shall be subject to such conditions and stipulation as in the judgment of the approving officer are possible and proper to (1) afford reasonable and feasible protection to the rights of the Government as guarantor or insurer, and as subrogee, and to each veteran participant against loss of his respective equity consequent upon the failure of other participants to discharge their obligations; (2) provide for a reasonable and workable plan for the operation and management of the project; (3) limit the personal liability of each veteran participant to those sums allocable on a proper ratable basis to the purchase, cost, and maintenance of his individual unit or participating interest; (4) limit commercial features to those reasonably calculated to promote the economic soundness of the project and the living convenience of the participants, retaining the essential character of a residential project.

(c) No such project, development, or enterprise may be approved which involves an initial grouping of more than 500 veterans, or a cost of more than five million dollars, unless it is conclusively shown to the satisfaction of the approving officer that a greater number of veterans or dollar amount will assure substantial advantages to the veteran-participants which could not be achieved in a smaller project.

(d) When approved as in this section provided, and upon performance of the conditions indicated in the prior approval, proper guaranty certificate or certificates may be issued in connection with the loan or loans to be guaranteed on behalf of eligible veterans participating in the project, development or enterprise not to exceed in total amount the sum of the guaranties applied for by the individual participants and for which guaranty each participant is then eligible.

(e) In lieu of guaranty as authorized in paragraph (d) of this section, insurance shall be available on application by the lender and all veterans concerned. In such case the insurance credit shall be limited to 15 percent of the obligation of the veteran applicant (subject to available eligibility) and the total insurance credit in respect to the veterans' loans involved in the project shall not exceed 15 percent of the aggregate of the principal sums of the individual indebtedness incurred by the veterans participating in the project for the purpose of acquiring their respective interests therein.

(f) There is reserved to the Administrator the power to approve loans not meeting the requirements or exceeding the limits prescribed in this section, and

there is hereby delegated to the Assistant Administrator for Finance, and the Director, Loan Guaranty Service, the authority to approve loans permitted or authorized by this section, to issue commitments to lenders and to authorize loan guaranty officers to issue certificates of guaranty or certificates of insurance credit in accordance with such prior approval.

§ 36.4344 *Loans for corporate or partnership purposes.* A loan of less than $25,000 to an eligible veteran for the purchase of an interest in a corporation or partnership to enable him to engage in business, may be guaranteed or insured, if otherwise eligible, provided such veteran has, or upon completion of the loan transaction will have control of the management of the enterprise through ownership of more than 50% of the outstanding voting stock of the corporation or at least a 50% interest in the partnership, and such veteran is, or as a result of the purchase will become, actively engaged in the conduct of the business on a full or part-time basis. Any loan to be made for the purchase of an interest in a business in which the veteran does not have or will not acquire the control above prescribed for loans eligible for automatic guaranty shall require the prior approval of the Administrator, the Assistant Administrator for Finance, or the Director, Loan Guaranty Service. A loan, otherwise eligible, may be approved for guaranty or insurance under this section provided that the conditions under which the veteran will engage in the business are such as reasonably to assure the right to an active participation by the veteran in the operation, management, supervision and control of the business during the life of the loan.

§ 36.4345 *Waivers, consents, and approvals; when effective.* No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Administrator or the subordinate officer to whom authority has been delegated by the Administrator.

Real Estate Loans

§ 36.4350 *Eligibility for guaranty or insurance.* (a) No loan for the purchase of an interest in residential, farm, or business realty, or for the cost of any construction, repairs, alterations or improvements thereon shall be eligible for a guaranty or insurance unless the veteran has or will become vested with an estate in the subject property not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien, or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien.

(b) Any such property or estate will not be ineligible by reason of encroachments, easements, servitudes, reservations for water, timber, or subsurface rights, or building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter: *Provided,* That such limitations on the quantum or quality of the estate or property, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by the act.

§ 36.4351 *Loans, first, second, or unsecured.* (a) Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement or repair thereof and for more than $1,000 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than $1,000 but 40 percent or less of the prior reasonable value of the property shall be secured by either a first or second lien. Those for $1,000 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he has an interest in the propery not less than that prescribed in § 36.4350 (a).

(b) Loans for the installation of equipment which will become fixtures upon, or for the repair, alteration or improvement of property being occupied under a lease with an unexpired term not less than the duration of the loan, and which property is used in connection with the business or farming operation of a veteran, may, if otherwise eligible, be guaranteed or insured: *Provided,* That the prospective income from the business or farming operation will permit retirement of the indebtedness within the term of the loan: *And provided further,* That the loan is secured to the extent required by § 36.4337.

§ 36.4352 *Tax or special assessment.* Tax or special assessment liens or ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of a specified dignity.

§ 36.4353 *Dual purpose loans, residential and business property.* If otherwise eligible a loan for the purchase or construction of a combination or residential property and business property which the veteran proposes to occupy in part as a home will not be ineligible under section 501 if not more than two business units are included. A loan for the purchase or construction of residential property containing more than four separate family units plus an added unit for each veteran participating in the ownership thereof, or more than two business units, must be classed as a business loan and satisfy the requirements of eligibility prescribed under section 503.

Section 505 (a) Loans

§ 36.4354 *Land sale contracts.* Loans to refinance the balance owed by a veteran on an existing land sale contract may be guaranteed or insured, *Provided,* That (1) if the contract was executed within one year of the date of application for the loan the purchase price contained in the terms of the contract shall not be in excess of the current appraised reasonable value of the property; and (2) if the contract was executed more than one year prior to the date of the application the purchase price contained in its terms shall not be in excess of the appraised reasonable value of the property as of the date of the execution of the contract and the unpaid amount of the contract shall not be in excess of the current appraised reasonable value of the property.

§ 36.4360 *Concurrent with primary loan.* A second loan is eligible for guaranty or insurance under section 505 (a) only if the proceeds thereof are used concurrently with and as part of the same transaction which is partially financed through the proceeds of the primary loan, or by continuing the primary loan in effect by assumption or otherwise.

Refinancing—Section 507

§ 36.4365 *Indebtedness eligible for refinancing.* (a) No loan shall be made to refinance delinquent indebtedness less than 60 days in default without a written statement from the holder of the delinquent obligation or other evidence satisfactory to the Administrator that it is delinquent.

(b) Any loan proposed to be made to refinance a delinquent obligation which was incurred within one year of the date of the application for refinancing shall be referred in advance to the Administrator with a report of the proposed borrower's income and expenses, and his affidavit stating the purchase price of the property purchased with the proceeds of the delinquent loan. The Administrator may hold any such case to be ineligible if it appears the guaranty or insurance of such refinancing would effect an evasion of any of the limitations imposed by the act.

(c) No loan guaranteed or insured by the Administrator under Title III may be refinanced under section 507 of that title.

Section 508 Loans

§ 36.4370 *Insured loan and insurance account.* (a) Loans otherwise eligible may be insured when purchased by a lender eligible under section 508 if the purchaser (lender) submits with the loan report evidence of an agreement, general or special, made prior to the closing of the loan, to purchase such loan subject to its being insured.

(b) A current account shall be maintained in the name of each insured lender or purchaser. The account shall be credited with the appropriate amounts available for the payment of losses on insured loans made or purchased. The account shall be debited with appropriate amounts on account of transfers, purchases under § 36.4318, or payment of losses. The Administrator may on six months' notice close any lender's insurance account. Such account after expiration of the 6-month period shall be available only as to loans embraced therein.

(c) Amounts received or recovered by the Administrator or the holder with respect to a loan after payment of an insured claim thereon will not restore any amount to the holder's insurance account.

§ 36.4371 *Amount payable by Administrator for credit on loan.* The amount payable by the Administrator for credit on the loan in accordance with section 508 (c) of the act will be 4% of the amount credited to the lender's insurance account for the particular loan.

§ 36.4372 *Transfer of insured loans.* (a) In cases involving the transfer from one insured financial institution to another insured institution of loans which are transferred without recourse, guaranty, or repurchase agreement, if no payment on any loan included in the transfer is past due more than one calendar month at the time of transfer there shall be transferred from the insurance account of the transferor to the insurance account of the transferee an amount equal to the original percentage credited to the insurance account in respect to each loan being transferred applied to the unpaid balance of such loans, or to the purchase price, whichever is the lesser.

(b) Transfers between insurance accounts in a manner or under conditions not provided in paragraph (a) of this section must have the prior approval of the Administrator.

(c) Where loans are transferred with recourse or under a guaranty or repurchase agreement no insurance credit will be transferred or insurance account affected and no reports will be required.

(d) In all cases of transfer of loans from one insured financial institution to another insured institution, except as provided in paragraph (c) of this section, a report on a prescribed form executed by the parties and showing their agreement with regard to the transfer of insurance credits shall be made to the Administrator.

§ 36.4373 *Debits and credits to insurance account under § 36.4318.* In the event that an insured loan is transferred under the provisions of § 36.4318, there shall be charged to the insurance account of the transferor a sum equal to the amount paid transferor on account of the indebtedness less the current market value of the property transferred as security therefor as determined by an appraiser designated by the Administrator, or the amount chargeable to such insurance account in the event of a transfer under § 36.4372, whichever sum is the greater. The credit to the insurance account of the transferee will be computed in accordance with § 36.4372 (a).

§ 36.4374 *Payment of insurance.* (a) In the event that pursuant to notice under § 36.4317 the holder forecloses or otherwise liquidates and applies the proceeds of security toward reduction of an insured loan, the net loss shall be reported to the Administrator with proper claim, whereupon the holder shall be entitled to payment of the claim within the amount then available for such payment under the payee's related insurance account. Subject to the provisions of paragraph (b) of this section and to § 36.4370 (b) a supplemental claim for any balance of an insurance loss may be filed at any time within five years after the date of the original claim.

(b) The basis of the claim for an insurance loss shall consist in the unrealized principal or the amount paid for the obligation, if less, plus unrealized interest, subject to the applicable dates specified in § 36.4321 (a), and those expenses, if any, allowable under § 36.4313, but subject to proper credits because of payments, set-off proceeds of security, or otherwise.

§ 36.4375 *Reports of insured institutions.* An insured financial institution shall make such reports respecting its insurance accounts as the Administrator may from time to time require, not more frequently than semiannually.

ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING SPECIALLY ADAPTED HOUSING

AUTHORITY: §§ 36.4401 to 36.4410 issued under Pub. Law 702, 80th Cong.

NOTE: Those requirements, conditions, or limitations expressly set forth in the act and not restated herein must be taken into consideration in conjunction with these regulations.

§ 36.4401 *Definitions.* Wherever used in the act or §§ 36.4401 through 36.4410, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated; namely:

(a) "Act": Public Law 702, 80th Congress, 2d Session.

(b) "Administrator": The Administrator of Veterans' Affairs or any employee of the Veterans' Administration authorized by him to act in his stead.

(c) "Movable facilities": Such exercising equipment and other aids as may be allowed or required by the approving medical officer.

(d) "Necessary land": Any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality.

(e) "Special fixtures": Construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the approving medical officer as necessary by nature of the qualifying disability.

(f) "Housing unit": A family dwelling or unit approved by the medical service as medically feasible for occupation as a home by the individual beneficiary including the land, improvements, and all appurtenances, together with such movable facilities or special features as are authorized under the definitions of those terms in §§ 36.4401 through 36.4410.

(g) "Remodeling": Any alterations, repairs, or improvements necessary or desirable to the housing unit as defined in §§ 36.4401 through 36.4410.

§ 36.4402 *Eligibility.* No beneficiary shall be eligible for assistance under the act for the purpose of reimbursing him for the cost of an existing structure acquired by him prior to applying for assistance or for constructing or remodeling a dwelling unless it is determined pursuant to §§ 36.4401 through 36.4410, in respect of the beneficiary that:

(a) It is medically feasible for such beneficiary to reside in the existing or proposed housing unit and in the locality where such is or will be situated;

(b) The nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes;

(c) Such unit bears a proper relation to the veteran's present and anticipated income and expenses;

(d) The veteran has or will acquire an estate in the property not less than a fee simple estate, or a leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, and such title as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community.

§ 36.4403 *Joint ownership of housing unit.* The construction or remodeling of a housing unit, or reimbursement to a veteran who has acquired a suitable unit at his own expense, shall be permissible notwithstanding that title to the home is or will be vested in an eligible veteran and his spouse. If an undivided interest is or will be owned by a person other than the spouse of the veteran the cost of the unit to the veteran shall be computed to be such part of the total cost of the unit as is proportionate to the undivided interest of the veteran in the entire property, and the percentages and amounts prescribed in the act shall be calculated only upon such cost to the veteran.

§ 36.4404 *Computation of cost of housing unit.* For the purpose of computing the amount of benefits payable to a veteran beneficiary there may be included in the total cost to the veteran the following:

(a) The cost of the necessary land and the grading, landscaping, and improvement thereof for use for residential purposes;

(b) The cost of the improvements erected thereon, and of the appurtenances thereto, including such heating, cooking, laundry and refrigeration equipment as may be suitable to equip a housing unit for residential use;

(c) The cost of remodeling a housing unit;

(d) The cost of movable facilities and special fixtures;

(e) Reasonable architects' and attorneys' fees for services rendered to the veteran which are necessary to and are in connection with the transaction;

(f) Any charges for the customary necessary connections to or extensions of public facilities and improvements;

(g) Such other reasonable costs or expenses incurred in closing a loan or financing the acquisition of the housing and land, including unpaid taxes, ground rents, or assessments, which are normally required to be paid by a lienor or a purchaser.

§ 36.4405 *Submission of proof to the Administrator.* As a condition precedent to the grant the Administrator may require submission of such proof of costs and other matters as he may deem necessary.

§ 36.4406 *Disbursement of benefit authorized.* After approval of an application for a grant the Administrator shall decide upon a method of disbursement which in his opinion is appropriate and advisable in the interest of the veteran and the Government and disburse the benefit payable accordingly. Disbursements may be made to the veteran or to third parties who have contracted with the veteran.

§ 36.4407 *Supplementary administrative action.* Notwithstanding any requirement, condition, or limitation stated in or imposed by §§ 36.4401 through 36.4410 the Administrator, within the limitations and conditions prescribed in the act, may take such action as may be necessary or appropriate to relieve undue prejudice to a veteran or a third party contracting or dealing with such veteran which might otherwise result.

§ 36.4408 *Delegation of authority.* (a) Except as hereinafter provided, each employee of the Veterans' Administration heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Administrator with respect to assisting eligible veterans to acquire specially adapted housing.

(b) Designated positions:

Assistant Administrator for Finance.
Director, Loan Guaranty Service.
Assistant Director, Loan Guaranty Service.
Division Chief, Loan Guaranty Service.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.

(c) Nothing in this section shall be construed to authorize any employee designated in paragraph (b) of this section to determine basic eligibility or medical feasibility.

§ 36.4409 *Guaranteed or insured loans under Servicemen's Readjustment Act.* In any case where, in addition to the benefits of Public Law 702, 80th Congress, the veteran will utilize his entitlement to the loan guaranty or insurance benefits of title three of the Servicemen's Readjustment Act of 1944, as amended, the complete transaction must be in accord with applicable regulations promulgated thereunder excepting § 36.4306 thereof.

§ 36.4410 *Allocation of the funds of the grant.* Any amount payable as a grant under the act may be required by the Administrator to be utilized as he deems advisable for payment of any of the following costs or debts which are obligations of the veteran before any part of grant may be paid to the veteran directly:

(a) Cost of necessary land,

(b) Cost of constructing or remodeling a housing unit,

(c) Delinquent taxes secured by a lien on the housing unit,

(d) Reduction or retirement of any indebtedness incurred in connection with the purchase, construction, or remodeling of a housing unit on which the grant is made.

Subpart B—Title V; Readjustment Allowance

§ 36.501 *Readjustment allowances for former members of armed forces*—(a) *Definitions.* (1) "Act" means the Servicemen's Readjustment Act of 1944, Public No. 346, 78th Congress.

(2) "Administrator" means the Administrator of Veterans' Affairs.

(3) "Agency" means any agency administering a State Unemployment Compensation Law or the Railroad Unemployment Insurance Act, which has entered into an agreement with the Administrator to assist him in the payment of allowances.

(4) "Allowance" means the readjustment allowance payable under the act.

(5) "Employment Office" means a public employment office which is utilized by the agency in administering its unemployment compensation law, and also means any facility designated as an employment office for the purposes of the act by the Railroad Retirement Board.

(6) "Agent" means the readjustment allowance agent appointed by the Administrator under section 1100 (a) of the act, as his representative assigned to a given agency.

(7) "Value of Remuneration other than Cash," as used in this act, shall be determined by the agency pursuant to its rules and regulations as to such valuation under its unemployment compensation law.

(b) *Starting date of readjustment allowance payment.* (1) With respect to agencies paying benefits on a flexible week basis, allowances for unemployment are first payable for the week starting Monday, September 4, 1944. With respect to agencies then paying benefits on a calendar week basis, (i. e. the week beginning Sunday) the first week for which allowances may be paid starts September 10, 1944.

(2) Allowances for the self-employed are first payable for the month of October, 1944.

(3) The allowances will be in the amount authorized in chapter IX of the act.

(c) *Applications for allowances.* (1) The veteran's initial application shall be made through local offices or facilities of an agency on a form supplied by the Administrator. Applications may be made by mail pursuant to agency regulations and procedures.

(2) The veteran, at the time he files his application, shall present sufficient evidence of the nature of his discharge or separation from military or naval service and the date and length of his active service. Original or properly authenticated copies of discharge or separation papers, or certificates in lieu of lost or destroyed discharges, shall be deemed sufficient evidence upon which to base a determination of entitlement and the number of weeks of allowances to which the veteran is entitled. A copy of a discharge or separation paper may be considered properly authenticated if such copy is certified by a notary public or other officer authorized by law to administer oaths or take acknowledgments. Photostats of original documents or of certified copies of records may be accepted if the original would be acceptable.

(3) The agency may require any veteran who files an application and has no social security account number to secure such a number.

(d) *Determination of entitlement.* (1) (i) Any person who served in the active military or naval service of the United States at any time after September 16, 1940, and prior to the termination of the present war and who is discharged or released from active service under conditions other than dishonorable, after active service of 90 days or more or by reason of an injury or disability incurred in service in line of duty, has potential entitlement to allowances under Title V. In the computation of service under any law, there should be excluded periods of agricultural, industrial or indefinite furlough; time under arrest, in the absence of acquittal; time for which the soldier or sailor was determined to have forfeited pay by reason of absence without leave, and time spent in desertion or while undergoing sentence of court martial. Time lost through intemperate use of drugs or alcoholic liquor or through disease or injury the result of his own misconduct, should not be excluded in such computation. Service with the Women's Army Auxiliary Corps is not considered active service.

(ii) An application for allowances under Title V of the act made by a person who served in the active military or naval service of the United States after September 16, 1940, and prior to the termination of the present war, and who asserts that he was discharged after active service of less than 90 days by reason of injury or disability, shall be cleared with the Veterans' Administration through the agent unless the statement is made on the discharge or separation papers that he was discharged for disability incurred in service in line of duty.

(iii) An application for allowances under Title V of the act will be denied if the applicant (*a*) was dishonorably discharged; (*b*) was discharged on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority; (*c*) was discharged as a deserter; (*d*) in the case of an officer if his resignation was accepted for the good of the service; or (*e*) was discharged or separated from the military or naval service to escape trial by general court martial.

(iv) Where the applicant was discharged or separated under other than honorable conditions for an offense other than one of those specified in paragraph (c) of this section the application shall be cleared with the Veterans' Administration through the agent.

(2) In determining the maximum number of weekly allowances potentially payable to the veteran under section 900 (b), the agency shall count "each calendar month or major fraction thereof of active service". For the purpose of such determination the term "calendar month" means the month starting with

the date of the veteran's entry upon active service, and each such corresponding month ensuing consecutively thereafter (i. e., the first "calendar month" starts on the beginning date of active service and ends on the day preceding the same date in the succeeding month: *Provided however*, That if the succeeding month does not include enough days to have a corresponding date, his first "calendar month" will end at the close of such succeeding month. The second "calendar month" starts immediately after the end of the first "calendar month" and its termination is likewise determined, and so on with the beginning and ending dates similarly determined.) When a fraction of such a month had elapsed on the veteran's discharge date, any balance of days remaining after the determination of calendar months as herein above described shall be treated as a "major fraction" if it includes 16 days or more.

(3) All the period between the veteran's entry upon active service and his discharge or separation is considered active service, except those periods enumerated in subparagraph (1) (i) of this paragraph. When the discharge, including remarks on the reverse of the certificate, does not show the date of entry upon active service but does show the date of induction (or date of enlistment), the latter shall be accepted as date of entry into active service except where active service of ninety days or more is in doubt. In those cases where such doubt exists, the application shall be cleared with the Veterans' Administration through the readjustment allowance agent.

(4) The agency shall make determinations of entitlement following the criteria stated herein, if sufficient evidence to support determinations is presented. If the veteran is unable to present sufficient evidence upon which to base such determination, including a determination as to the period of active service, the application involved will be cleared with the Veterans' Administration through the readjustment allowance agent. The agency will make determinations of entitlement based upon the information received as a result of the clearance through the readjustment allowance agent and enter that determination on the application forms.

(e) *Registration for work and reporting unemployment.* (1) Unemployed veterans shall be registered for work in accordance with the employment office regulations, policies and procedures applicable to claimants under the Unemployment Compensation Law of the agency.

(2) Unemployed veterans shall report their unemployment at such times and in such manner as is required by the agency for claimants under its Unemployment Compensation Law.

(3) No unemployed veteran shall be eligible to receive an allowance for any week in which he was not so registered or with respect to which he did not so report: *Provided*, That such failure to be registered or to report may be waived by the agency on the same basis as would justify such a waiver as to its unemployment compensation claimants. Registration may be waived in case of illness as provided in paragraph (m) of this section.

(f) *Use of agency's type of week.* Claims for allowances filed by unemployed veterans with a given agency shall be based on the weekly time unit which currently applies to claimants under the agency's Unemployment Compensation Law: *Provided*, That any agency which applies other than a weekly time unit to unemployment compensation claimants shall adopt suitable procedures to provide for a weekly basis for allowances to unemployed veterans.

(g) *Time and frequency of allowance payments.* Allowances for unemployment shall be paid at the intervals prescribed for unemployment compensation payments by the law or regulations of the agency. Allowances for self-employment shall be paid following the receipt of valid claims.

(h) *Required content of agency records.* (1) Each agency shall maintain files containing all correspondence and other papers relating to individual veteran's claims, and such files shall be readily accessible to the agent, or other authorized representative of the Administrator.

(2) Each agency shall maintain a separate record for each veteran whose application is allowed. This record shall be maintained in such manner as will facilitate a prompt compilation of required statistical data and shall contain at least the following information:

(i) The veteran's name.

(ii) His last service serial number, and branch of service.

(iii) The date and place of the veteran's birth.

(iv) The maximum number of weekly allowances to which the veteran was originally entitled.

(v) Number of weekly allowances paid, and total amount of weekly allowances paid during each consecutive period of unemployment.

(vi) Number of monthly payments made to the self-employed and allowance weeks charged.

(vii) Disqualifications imposed (current or past) and weeks involved.

(viii) Record of transfer to or from another agency.

(i) *Required content of claims for total unemployment.* (1) The initial, or additional first claim (i. e. the first claim taken after an intervening period of employment) filed by a veteran during any period of total unemployment shall contain a signed statement covering at least the following information:

(i) Residence.

(ii) Ability and availability for work.

(iii) Registration for work.

(iv) Name of last employer.

(v) Reason for separation from last employer.

(vi) Recent refusal of job offer or job referral.

(vii) Recent failure to attend a free training course.

(2) Continued claims shall contain a signed statement covering at least the following information with respect to the week for which allowance is claimed:

(i) Ability and availability for work.

(ii) Registration for work.

(iii) Refusal of job offer or referral.

(iv) Failure to attend free training courses.

(v) Wages earned.

(vi) Benefits, received or accrued under other programs, which are deductible from allowances.

(j) *Allowance checks; repayments, etc.* (1) Each agency shall supply its checks or other forms for payment of allowances in such form as is best suited to its own procedures and equipment, provided that the face of each such check (or order for payment) shall bear the following statement: "In payment for readjustment allowances under the Servicemen's Readjustment Act of 1944."

(2) Repayment to the agency of the amount of readjustment allowances paid veterans will be made promptly following receipt of certified vouchers (Standard Form 1034) by the agent. Form 1034 will show the designation of the fund to be credited, the total amount to be repaid, the period covered, etc., and will be supported by a schedule or list of the individual items totaling the amount of the repayment claimed.

(3) The amount of canceled checks and collections on account of items for which repayment had been made to the agency will be shown as a deduction from the amount stated on a subsequent Form 1034 and there will be attached a list of the checks canceled and the collections made.

(4) The agency will establish and maintain a separate depositary (banking) account for benefit payments under Title V of the act and following each reconciliation of the account will furnish the agent a summary statement showing the balance at the beginning and end of the period, the total charges and total credits during the period, and the total of the checks outstanding at the end of the period.

(k) *Partial unemployment claims.* (1) Each agency whose law provides for partial unemployment benefits shall take and pay veteran's claims for weeks of partial unemployment in a manner consistent with its methods under its unemployment compensation law.

(2) Any agency whose unemployment compensation law does not provide for the payment of partial unemployment benefits, shall provide for payment of veteran's partial unemployment benefits by adopting and putting into effect procedures which are insofar as practicable consistent with those of other agencies.

(3) Each agency's claim-form for veterans' claims for weeks of partial unemployment shall contain a signed statement by the veteran covering the following information with respect to the week covered by the claim:

(i) Items (i), (ii), (iii), (iv), (vi), and (vii) listed in subparagraph (1) of paragraph (i) of this section.

(ii) Wages payable (i. e. earned).

(iii) That work was for less than a full work week.

(iv) Reason for less than a full work week.

(l) *Transfer of claims between agencies.* (1) When a veteran, who has been receiving allowances through a given agency, transfers to the jurisdiction of another agency, he may continue his

claims against the original agency under the interstate benefit payment plan (or, by direct mail with the consent of the original agency), or, at his option, he may request the new agency to have his allowance record transferred so that the new agency may pay his allowances.

(2) The form used by each agency for transferring a veteran's allowance record under subparagraph (1) of this paragraph 5 shall contain the same minimum information specified under paragraph (h) (2) of this section.

(m) *Allowances during periods of illness or of disability.* (1) Under the provisions of section 700 (b) (4) of the act, a period of continuous unemployment will be deemed to start on the effective date of the veteran's first claim for allowances during the period of continuous unemployment.

(2) Each agency shall initially, if practicable, secure evidence of the veteran's illness or disability through a certificate of his attending physician. The veteran's signed statement or other suitable evidence shall be obtained.

(3) So far as practicable, the agency shall assist the veteran in reporting weekly his continued unemployment, due to his illness or disability, by mail or through his designated representative.

(4) The first claim for allowance filed by a veteran for a period of illness or disability shall bear a signed statement by the veteran that he is unable to work and shall specify the nature of his illness or disability. Such claims shall also provide space for a physician's certification to the same effect, or for an explanation as to why such a certification could not practicably be secured.

(5) Continued claims for allowances filed by a veteran for a period of illness or disability under this regulation shall bear a signed statement by the veteran that he was unable to work throughout the week or weeks in question.

(n) *Allowances to the self-employed.* (1) Each agency shall determine whether a veteran is engaged in self-employment, consistently with the definition of the employment relationship provided in its unemployment compensation law.

(2) A veteran shall be treated as having been fully engaged in self-employment during a given calendar month only if, throughout that month, he was engaged in his self-employment to the exclusion of any services in an employment relationship. For the purposes of this paragraph calendar month means one of the given twelve months of the calendar year.

(3) A veteran's net earnings from his self-employment include total income from self-employment less expenses incurred in securing such income. Personal or family expenditures shall not be deductible as expenses.

(4) Each self-employed individual shall maintain such records as are necessary for a determination of his net earnings. Such records shall reflect income received and expenses paid, and shall be open to inspection or audit by an authorized agency representative, or of the Veterans' Administration.

(5) Veterans' claims for allowances for months of self-employment shall be filed at a local office of the agency, or by mail on forms prescribed by the Administrator.

(6) Such claim shall be examined and a determination made in respect thereto by the State agency. This determination will include the eligibility of the claimant and the amount of the allowance. If the claim is allowed, the number of weeks of entitlement of the claimant will be decreased by five (5).

(7) Each such claim that is allowed shall be processed for payment by the State agency in accordance with procedures established similar to those under which payments of readjustment allowances are made to unemployed veterans and in accordance with paragraph (j) of this section.

(8) The determination of the State agency in respect to a self-employed claim shall be subject to the same procedures relating to appeals that now govern, or that shall be made to govern, appeals from a determination in respect to an unemployed claim.

(o) *Payment of claim after death.* (1) In case a veteran dies, and at the time of his death there is due and payable to him readjustment allowances, the amount thereof shall, upon claim therefor, be certified to the agent. The agent shall forward such certification to the Dependents Claims Service, Veterans' Administration, Washington, D. C., for adjudication. The amount of such allowances shall be awarded under the provisions of § 4.160 (a) and (b) of this chapter to the surviving spouse, or if there be no surviving spouse, to the child, or children, dependent mother or father, in the order named. In all other cases only so much of the unpaid allowances may be paid as may be necessary to reimburse a person who bore the expense of last illness and burial: *Provided,* That no part of the allowances due the deceased veteran shall be used to reimburse any political subdivision of the United States, or of any State, for expenses incurred in the veteran's last sickness or burial.

(p) *Agency application of disqualifications.* Each agency shall take appropriate steps consistent with its established administrative policies, procedures, and precedent (disregarding the provision "attributable to the employer") to enforce and apply the disqualifications provided in the act. Each agency shall interpret and apply such disqualifications so far as practicable consistently with decisions of the agent on second appeal, and with decisions of the Administrator on final review.

(q) *Additional disqualifications.* Pursuant to section 800 (c) (2) of the act, the Administrator hereby prescribes that each agency may apply the following additional disqualifications. In the case of successive (consecutive) disqualifications and the assessing of additional disqualifications (except as determined by the Administrator upon referral by the agency) the aggregate number of weeks to be assessed by the agency shall not exceed thirteen (13).

(r) *Determinations and appeals with respect to unemployment.* (1) Each determination of the agency with respect to a veteran's application or claim shall be in writing and shall bear a clear statement of his right to appeal.

(2) Such determination shall be final unless within the time limit set by the agency's law and regulations for the filing of appeals from initial determinations an appeal is taken therefrom. Except as provided in this section, or where another referee or tribunal is designated by the Administrator, such appeal shall be heard and decided by the same referee or tribunal which would hear and decide the appeal if it had arisen under the law of the agency. The hearing shall be conducted in accordance with the agency's law and regulations, in the same manner as are appeals from the agency's unemployment compensation benefit determinations, except as otherwise prescribed by the Administrator.

(3) Each decision of such referee or tribunal shall contain: The name of the agency whose determination is appealed; the name, most recent serial number, and last known address of the claimant; a complete statement of the case; findings of fact; conclusions of law; and the decision. Such decision shall be signed and dated.

(4) Unless an appeal is heard and decided by the referee or tribunal within thirty days after the date upon which the appeal was filed with the agency the claimant may make written application to the agent to have such appeal transferred to, and heard and decided by the agent. Upon receiving such application the agent may, if after consultation with the agency, he finds that such delay was unreasonable, order the appeal transferred to him for hearing and decision.

(5) The claimant shall be promptly notified of the referee's or tribunal's decision and such decision shall be final unless within thirty days after the date of mailing of notice to the claimant's last known address or in the absence of such mailing within thirty days after the delivery of such notice a written appeal pursuant to section 1102 of the act is filed with the agency, the referee or tribunal, or the agent.

(6) When such appeal is filed the record shall be transmitted to the agent. Upon such agent's request he shall be furnished with a transcript of the hearing on appeal.

(7) Interstate appeal proceedings shall be conducted in accordance with the law and regulations of the agency conducting the hearing and appeal.

(8) The phrase in section 1103 of the act, "the appellate procedures being subject to final appeal to the Administrator" is hereby construed to mean "the appellate proceeding and the decision being subject to final appeal to the Administrator".

(9) For the purpose of this section the veteran shall be deemed to be the only interested party, other than the United States, except that in cases involving a strike, lock-out or other labor dispute the employer shall be deemed to be an interested party.

(10) Any appeal to the Administrator from the decision of the agent must be made in writing within sixty (60) days from the date of mailing of notice of decision to last known address of the veteran.

(s) *Prosecutions and penalties.* In case an agency discovers an apparent violation of the act, subject to penalty under section 1300 or 1301, the agency shall report the relevant facts to the agent, who will be responsible for further proceedings.

(t) *Force of instructions on forms.* The Administrator's instructions appearing on forms supplied by him under this instruction shall have the same force and effect as if they were set out in full in this instruction.

(u) *Statistical reports.* Each agency shall report to the agent promptly after the close of each calendar week the number of veterans who, during that week, were paid allowances by the agency on account of unemployment, the total amount so paid, and the number of veterans whose entitlement expired during the week. The agency shall furnish such other reports or information which the Administrator finds necessary. It will be the policy of the Administrator, where feasible, to consult with the agencies before requiring additional statistical reports.

(v) *Individual reports.* Each agency shall, with respect to each veteran whose right to benefits has been exhausted or has expired, or whose record has been transferred to another agency, or at intervals as prescribed by the Administrator, report the following information on forms supplied by the Administrator.

(1) The name of the veteran.

(2) His serial number and branch of service.

(3) Total number of weekly allowances and amount paid during each consecutive period of unemployment and the beginning and ending dates thereof. (Veterans' Administration Insts. 1, 1–B, 1–C, 1–D, 1–E, 1–F) (Title V, 58 Stat. 295; 38 U. S. C., 696)

§ 36.502 *Determination of entitlement to readjustment allowances.* (a) For the purpose of determining entitlement to readjustment allowances under section 700, Public No. 346, 78th Congress, a veteran must have been discharged or released from active service under conditions other than dishonorable after ninety days or more of active service, or by reason of an injury or disability incurred in line of duty, and must have served after September 16, 1940, and prior to the termination of the war. This means that in determining eligibility under section 700, the fact that the major portion of the active service covered a period prior to September 16, 1940, or subsequent to the termination of the war, is not material.

(b) Computation of number of weeks of readjustment allowances. For the purpose of computing the number of weeks of readjustment allowances under section 900 (b) of the act, only periods of active service after September 16, 1940, and prior to the termination of the war will be taken into account; thus, a veteran whose active service covered the period March 14, 1940, to October 15, 1940, would be entitled to eight weeks of readjustment allowances; but a veteran who served for a period of ninety days or more ending September 28, 1940, would have eligibility for benefits under Title V, but have no entitlement to readjustment allowance since his active service after September 16, 1940, was less than the major portion of a month. (Veterans' Administration Inst. 2) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.503 *Procedure for determinations of net earnings under section 902 (b) of the Servicemen's Readjustment Act of 1944* — (a) *Claims by self-employed.* Claims for readjustment allowance by the self-employed, under section 902 (b) of the act cited above, will be prepared on a form prescribed by the Administrator.

(b) *Definition of "net earnings".* The term "net earnings" as used herein means the net amount realized in earnings by the veteran in any given month which may serve the purpose of his immediate livelihood. It covers earnings received by him in connection with his self-employment, reduced by the amount of expenses incurred during such month which are directly related to his self-employment. Personal or family expenditures shall not be deductible as expenses.

(c) *Valuation of products in determining "net earnings".* The value of any product produced as a result of his self-employment enterprise used by the veteran for the livelihood, maintenance or sustenance of himself or his family, will be taken into account in determining "net earnings". This value will be estimated on the basis of prevailing market prices; that is, the estimated amount that the veteran would have received had he sold the product at the nearest market.

(d) *Keeping of "net earnings" records.* A veteran's "net earnings" shall be shown in keeping with sound accounting practices. The records which each self-employed individual is required to maintain (§ 36.501 (n) (4)) may be kept on either a cash or an accrual basis. The method used should be that best calculated to reflect the true "net earnings" of the veteran's enterprise considering the customs, incidents and advantages of the business itself and should be used consistently throughout the duration of the veteran's claiming.

(e) *Two or more types of self-employment.* When a self-employed veteran is engaged in two or more types of self-employment, such information shall be incorporated on the claim form and total income and expenses with respect thereto shall be appropriately reported.

(f) *Net earnings when enterprise is partly owned or is a partnership.* When a self-employed veteran shows that his business venture is partly owned or the business is a partnership, the entire income and expenses of the business shall be reported in the space provided therefor on the claim form. The names of all owners or partners, together with the percentage of division of profits applicable to each shall be entered on the claim form. In arriving at the net earnings of the veteran filing the claim the rate applicable to the veteran shall be used.

(g) *Labor performed during month of filing claim.* Labor performed by a self-employed veteran during a month for which he files a claim for allowances will not, in itself, preclude him from receiving an allowance for that month, provided such labor was casual or incidental to his business and did not conflict with, interrupt, or cause the abandonment, either completely or in part, of his activities in the pursuit of his business. Earnings from such labor shall be treated as income for the month during which the labor was performed.

(h) *Period during which claim may be filed.* The veteran's claim for readjustment allowance and statement of net earnings from self-employment shall be filed not later than the last day of the month following that for which the claim is filed; provided that if the claimant shows extenuating circumstances, the period during which the claim may be filed may be extended not later than the 10th day of the second month following that for which the claim is filed. (Veterans' Administration Insts. 3, 3–A, 3–B) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.504 *Operations of the Readjustment Allowance Office, San Juan, Puerto Rico*—(a) *Applicability.* The provisions of § 36.501, as modified by this section shall govern operations of the Readjustment Allowance Office, Puerto Rico, established by Administration Order No. 42 of September 6, 1944.

(b) *Definitions.* (1) "Agency", as used in § 36.501, includes the Readjustment Allowance Office, Puerto Rico.

"Manager" means the individual administratively responsible for the operation of the Readjustment Allowance Office, Veterans' Administration, Puerto Rico.

(3) "Main office" means the principal office of the agency at San Juan, Puerto Rico.

(4) "Local office" means an office, either stationary or itinerant, established for the purpose of carrying out the provisions of Title V of the act, and the regulations issued pursuant thereto.

(5) "Employment office" means a free public employment office operated by the United States Employment Service.

(6) "Itinerant service" means a service with respect to the payment of allowances maintained by either the Readjustment Allowance Office, Puerto Rico, or the United States Employment Service.

(7) "Week of unemployment" means a week during which a person performed no service and received no wages, or one during which he worked less than a full work week due to lack of work and earned less than $23.

(8) "Week" and "workweek" means a period of seven consecutive days commencing Sunday and ending at midnight, Saturday.

(c) *Filing of claims for allowances.* (1) A person in the vicinity of an employment office shall present himself at such office and register for work and file his claim for allowances. The effective date of such registration and claim for allowances shall be the first day of the week in which he files his claim, except that registration at such employment office within a period of seven days following an individual's first day of unemployment shall be deemed effective as of the first day of the week in which the

individual's termination of employment occurred if good cause to justify or excuse the delay is shown. When a claimant's allowances cannot be determined due to absence or incompleteness of the discharge or separation paper, or in the presence of a claim or indication of insanity as provided in the first proviso, section 300, Public No. 346, 78th Congress, the claimant's application (Form 1382) together with a statement of the facts shall be forwarded to the Veterans' Claims Service, Veterans' Administration, Washington 25, D. C., for appropriate action. The section of the act just cited relates to a discharge or dismissal which bars benefits and provides: "That in the case of any such person, if it be established to the satisfaction of the Administrator that at the time of the commission of offense such person was insane, he shall not be precluded from benefits to which he is otherwise entitled under the laws administered by the Veterans' Administration."

(2) A person in a locality wherein itinerant service is provided may register for work and file a claim for allowances with such itinerant service. His registration shall be effective as of the first day of the week of unemployment in which his registration occurs, except that the effective date of his claim shall be the first day of the week in which his termination of employment occurred if he registers for work with such itinerant service at its first regular visit following his termination of employment, or at its second regular visit, provided good cause is shown for his failure to register at the first regular visit.

(3) A person in a locality designated as one wherein registration for employment and filing of claims may be made by mail, may register and file his claim by forwarding his discharge or separation paper to and requesting the required registration and allowance claim forms from the main office. If such person completes and remails such forms not later than seven days following the date upon which they were mailed to him by the agency, his claim shall be effective as of the first day of the week in which he mailed his written request. If he fails to complete and mail his registration within the period above prescribed, his registration shall be effective as of the first day of the week in which such completed forms were mailed: *Provided, however,* That for good cause shown, the agency may permit such registration to be effective as first provided above.

(4) To maintain continuing eligibility for allowances with respect to any week of unemployment during any continuous period of unemployment, an individual shall continue to register and report as provided in subparagraphs (1), (2), and (3) of this paragraph, once each week at a time designated by the agency, or at intervals of more or less than one week when so directed by the agency. No continued claim for allowances shall be allowed until the claimant shall furnish to the agency a signed continued claim for allowances on the form prescribed.

(d) *Extended period for registration and filing claims for good cause.* (1) If the failure of any person to register and file a claim for allowances within the time set forth in these regulations was due to failure of the agency to discharge its responsibilities promptly in connection with such claim, the period during which such claim may be filed shall be extended to a date which shall be not less than one week after the person has received appropriate notice from the agency of his potential rights to allowances.

(2) The agency may for good cause shown to its satisfaction waive the registration requirements herein provided and further extend the time during which registration for allowances may be made: *Provided, however,* That no extension may be granted beyond the period of limitation for payment of allowance provided in section 700 (a) of the act.

(e) *Determination of suitability of employment offered.* In determining whether or not any work is suitable for any person claiming allowances, consideration shall be given, but not limited, to the following factors:

(1) The degree of risk involved to his health, safety and morals.

(2) His physical fitness.

(3) His prior training, earnings and experience.

(4) His prospects of securing work in keeping with his prior training, experience and earnings.

(5) The distance of the available proffered work from his residence.

(6) The length of his unemployment.

Under no condition will work be determined suitable if, as a condition of being employed, the claimant would be required by a prospective employer to join a company union or to resign from or to refrain from joining a bona fide labor organization.

(f) *Determination of good cause for quitting, refusing to apply for, or accept suitable work.* In determining whether any person claiming allowances has good cause for quitting suitable work, failing to apply for or accept suitable work, consideration shall be given, but not limited, to the following factor: Did the claimant act as a reasonable, prudent and careful person would have acted under the same or similar conditions? Under no condition shall the question of good cause for quitting, for refusing to apply for or accept work, be confined to the employment itself, but may rest upon reasons entirely personal to the claimant. The personal reasons must be substantial, such as the preservation of home, family and its education; claimant's health, age and percentage of disability; health of the dependents of the claimant; the preservation of useful skills, etc.

(g) *Determination and review of claims.* (1) Claims for allowances shall be promptly determined on the basis of the facts presented. Notice of such determination shall be promptly given to each claimant. Such notice to the claimant shall advise him of the number of weeks of potential allowances and other data pertinent to his allowances, and if disqualified, the time and reason for such disqualification. If a claimant is ineligible, he shall be advised of such ineligibility and the reason therefor. Unless the claimant, within seven days after the delivery of such notification, or within ten days after such notification was mailed to his last known address, files with the agency a written request for review of or an appeal from such determination, it shall be final: *Provided,* That if the claimant subsequently, within the time limits provided in section 700 of the act, presents additional facts revealing his eligibility to allowances, a redetermination of the claim shall be made.

(2) Upon receiving a written request for review, the agency may, on the basis of such facts as it may have in its possession or may acquire, affirm, modify, or reverse the prior decision, or refer the claim to the chief of allowances. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within seven days after the date of mailing or within five days after delivery of such notification, such latter decision shall be final and allowances shall be paid or denied in accordance therewith.

(h) *Time and frequency of allowance payments.* Allowances shall be paid at intervals of one week.

(i) *Allowance checks.* Vouchers covering allowances certified by the agency will be forwarded for payment to the designated office of the Division of Disbursement, Treasury Department, San Juan, Puerto Rico.

(j) *Allowances to the self-employed.* The duties imposed upon the readjustment allowance agent under paragraph (n) of § 36.501, will be discharged for the agency by the chief of allowances or the senior claims examiner.

(k) *Appeal from the initial readjustment allowance determination.* (1) Appeals from initial readjustment allowance determinations shall be heard and decided by the chief of allowances. The person appealing shall file a written notice of appeal with the main office of the agency, or at the nearest employment office, which may be:

(i) Upon an appeal form provided by the agency, or

(ii) A writing setting forth: The name of the appellant; the name and serial number of claimant; and the grounds upon which the appeal is made: *Provided,* That nothing herein contained shall limit the issues presented at the hearing to the grounds for appeal submitted by the appellant.

(2) All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. Any other party to an appeal before the chief of allowances may present such evidence as may be pertinent. The chief of allowances may take such additional evidence as he deems necessary. The testimony of all parties and witnesses shall be given under oath.

(3) The parties to an appeal, with the consent of the chief of allowances, may stipulate as to the facts involved. He may decide the appeal on the basis of such stipulation, or, in his discretion, may set the appeal for hearing and take such further evidence as he deems necessary to enable him to render his decision.

(4) The chief of allowances may indicate to the reporter portions of the evi-

dence which he wishes transcribed to aid him in preparing his findings of fact and decision.

(5) The chief of allowances is authorized to grant or deny requests for adjournment or continuance of a hearing. If any party to a hearing fails to appear at the appointed time and place of hearing and has not requested a continuance or postponement showing good cause, prior to the time of the hearing, the chief of allowances in his discretion may continue the hearing to a later date or write his decision on the facts of record.

(6) The claimant and any other interested parties shall be notified promptly in writing of the decision and such decision shall be final unless within thirty days after the date of the mailing of the notice to the last known address, or in the absence of such mailing, within thirty days after the delivery of such notice, a written appeal by the claimant is filed with the agency.

(l) *Appeal from decision of the chief of allowances.* (1) Appeals from the decision of the chief of allowances will be heard and decided by the manager. The claimant's appeal shall be filed with the main office of the agency or at the nearest employment office and may be presented upon an appeal form provided by the agency or may be in any written form that sets forth:

(i) The name and serial number of the claimant.

(ii) The grounds upon which the appeal is made: *Provided, however,* That nothing herein contained shall limit the issues presented at the hearing to the grounds for appeal submitted by the appellant. The claim may contain references to or excerpts from the original minutes on the appeal before the chief of allowances.

(2) The acceptance of an appeal from a party other than the claimant will be conditioned upon such party obtaining prior authorization from the manager. This may be obtained by filing a notice of application for leave to appeal. Unless the notice of application discloses a direct relation to the case and sets forth the specific grounds for the application, the manager will deny the request.

(3) The manager in his discretion may decide the appeal upon the record, may take additional evidence or remand the issue or issues to the chief of allowances for the purpose of taking additional evidence.

(4) In the hearing of an appeal the manager may limit the parties to oral argument, or the filing of written argument, or both. If, in the discretion of the manager, additional evidence is necessary, the parties shall be notified by the manager, in writing, of the time and place such evidence will be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue on which the manager directed the taking of evidence.

(5) If the manager should remand any issue or issues to the chief of allowances, additional evidence shall be taken by him in the manner prescribed for the conduct of hearings on appeals.

(6) The decision of the manager shall be in writing and shall set forth his finding of fact, the reason for his decision, and his decision. Each interested party shall be promptly notified of the decision by mailing a copy of such decision to such party's last known address.

(m) *Notice of hearings and transmittal of decisions.* (1) Notices of hearings, specifying the time and place, shall be mailed by either the chief of allowances or the manager, as appropriate, to all interested parties at least seven days before the date of the hearing. Such notice shall set forth the reasons for such appeal as submitted by the appellant and shall be deemed good and sufficient if mailed to the last known address of each of the interested parties.

(2) The decision or the letter transmitting the decision to the interested parties shall set forth the rights of such parties to further appeal and the time limits relative thereto.

(3) One copy of all appeals decisions shall be forwarded to the chief readjustment allowance division.

(n) *Representation before the chief of allowances or the manager.* (1) The veteran, or his authorized representative, and any person having a direct relation to the case may appear in any proceedings before the chief of allowances or the manager.

(2) The Administrator (by attorney or other representative) shall be deemed an interested party to any hearing.

(3) Hearings before the chief of allowances or the manager shall not be open to the public.

(o) *Nondisclosure of information.* All matters relative to an application for allowances shall be treated as confidential and shall not be open to public inspection. Any interested party may have access to as much of the record as is necessary to prosecute a claim or appeal.

(p) *Appeal to the Administrator.* Any interested party may appeal to the Administrator from the decision of the manager. Such appeal shall be in writing and be made within sixty (60) days from the date of mailing of the decision of the manager to the party's last known address. (Veteran's Administration Inst. 4) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.505 *Determination as to applicability of the provisions of section 1300 Title V of the Servicemen's Readjustment Act of 1944*—(a) *Delegation of authority to State unemployment compensation agencies.* The State unemployment compensation agencies are hereby vested with authority to hold hearings and to make findings of fact as to whether or not a claimant knowingly accepted an allowance to which he was not entitled under the provisions of Title V, Public No. 346, 78th Congress.

(b) *Requirement for hearing and determination by agency and review by readjustment allowance agent.* In all cases where it is indicated that a veteran knowingly accepted the payment of an allowance to which he was not entitled, or knowingly accepted an allowance where fraudulent representations were made to secure or increase the allowance, it is the responsibility of the State agency to hold a hearing and make a determination of the applicability of the provisions of section 1300, Title V, Public No. 346, 78th Congress. The determination will be reviewed by the readjustment allowance agent and the provisions of section 1300 will not be applied until the readjustment allowance agent has approved the determination of the State agency.

(c) *Veterans right to request review of decision.* Where the readjustment allowance agent concurs with the determination of the State agency holding the claimant ineligible to receive any further allowance under Title V, the veteran will be informed by the State agency of his right to request the Administrator to review the decision.

(d) *Penalty imposed under section 1300.* The provisions of section 1300 may be imposed irrespective of the disposition of cases submitted for action under the provisions of section 1301 and the method of handling thereunder. (Veterans' Administration Inst. 6) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.506 *Waiving recovery of overpayments*—(a) *Delegation of authority to State unemployment compensation agencies.* The State unemployment compensation agencies are hereby vested with authority, in those cases where it shall appear that an overpayment exists in the accounts of any claimant for readjustment allowances, to hold hearings, to make findings of fact and to determine whether or not recovery of such overpayment shall be waived under the provisions of section 28, World War Veterans' Act, 1924, as amended (section 453, U. S. C., Title 38), which is for application under the terms of section 1500, Servicemen's Readjustment Act of 1944.

(b) *Determination by State agency subject to approval by readjustment allowance agent.* A determination by the State agency that recovery of an overpayment shall be waived will not become effective until the facts of the case shall have been briefed and submitted to, and the determination therein reviewed and approved by, the readjustment allowance agent.

(c) *Delegation of authority to readjustment allowance agent to approve determination of State agency.* Each readjustment allowance agent is hereby vested with authority to review and to approve or disapprove a determination of the State agency waiving recovery of an overpayment. Upon his approval, the agent is hereby authorized to execute, for the Administrator, an appropriate Certificate of Waiver of Overpayment.

(d) *Right of veteran to appeal decision.* In every case where recovery of an overpayment is ordered, or waiver is denied, the veteran will be informed by the State agency of his right to appeal the decision, or to request a review by the Administrator, as the case may be, in accordance with appeal procedure set forth in § 36.501.

(e) *Provisions governing the granting of waiver of recovery of overpayment.* In their consideration and determination of the propriety of granting a waiver of recovery of an overpayment, both the State agencies and the readjustment allowance agents will be governed by the provisions of applicable law and guided

by the principles set forth in regulations and decisions interpretive thereof. (Veterans' Administration Inst. 7) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.507 *Operation of State cooperating agencies and others*—(a) *Authority of State agencies under section 800 (a) (3).* The State agencies are hereby vested with authority to investigate and determine cases arising under the above section of the act. This determination shall be subject to appeal in the same manner as any other determination made by the State agency.

(b) *Courses included in "free training courses".* The words "free training course" shall include training courses provided under either a State or Federal or Federal-State training program. Such a training course must be one which would appear to hold out a prospect of reemployment within a reasonable period not too far in the future.

(c) *Courses under Part VII and Part VIII, Veterans' Regulation No. 1 (a) as amended (38 U. S. C., ch. 12).* A training course under Part VII which looks to rehabilitation of the applicant (including vocational counseling or aptitude evaluations) within a reasonable period of time into an employment objective in which there are employment opportunities which can be foreseen, is within the meaning of the phrase "free training course." A retraining course under Part VIII, Veterans' Regulation No. 1 (a), as amended, is within the meaning of the language, if the veteran can be retrained in an employment objective as to which there is a favorable opportunity of employment when and if retraining is completed. As to either Part VII or Part VIII, however, a failure or refusal to apply for, or to accept, education as distinguished from training, is not a failure to avail oneself of a free training course.

(d) *Determination of "good cause" in claimant's failure to attend.* In determining the question of good cause with respect to a claimant's failure to attend an available free training course, consideration shall be given, but not limited, to the following factors:

(1) Personal or family considerations affecting the claimant's decision.

(2) Prospects of employment in claimant's primary occupations or related occupations for which he is fitted by training, experience and skills.

(3) Comparison of claimant's prospects for employment in his primary or secondary occupations with that of other persons seeking employment in those occupations.

(4) Duration of claimant's unemployment.

(5) Suitability of occupation for which claimant is to be trained with respect to:

(i) The existence of entry jobs in the community.

(ii) The opportunities for employment in entry and non-entry jobs.

(iii) The wages, hours and working conditions in entry and non-entry jobs.

(6) Suitability of training for claimant with respect to:

(i) The duration of the course.

(ii) The claimant's age, aptitudes, experience, skills and physical ability.

(iii) Increasing the claimant's employability.

(iv) Increasing the claimant's opportunities to secure suitable employment. (Veterans' Administration Inst. 8) (Title V, 58 Stat. 295; 38 U. S. C. 696)

§ 36.508 *Delegation of authority to readjustment allowance agents and State unemployment compensation agencies*—(a) *Subpoena power.* The readjustment allowance agent located in each of the several States and the administrative head of each participating State unemployment compensation agency are hereby vested with authority to issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles from the place of the hearing, to require the production of books, papers, documents and other evidence, to take affidavits, to make investigations, and to conduct hearings and examine witnesses upon any matter relating to Title V, Public No. 346, 78th Congress.

(b) *Delegation of authority to invoke aid of courts in disobedience cases.* In case of disobedience to any such subpoena or contumacy by or on the part of any person so subpoenaed, the readjustment allowance agents and the State unemployment compensation agencies are hereby vested with authority to invoke the aid of any District Court or the District Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. (Veterans' Administration Inst. 9) (Title V, 58 Stat. 284; 38 U. S. C. 693)

§ 36.509 *Offset of subsistence allowance overpayments*—(a) *Statement of policy.* The payment of readjustment allowances to a veteran against whom there is outstanding an overpayment of subsistence allowances as to which all other means of collection have been exhausted is not in accord with Federal disbursement practice, and is not a proper expenditure of Government funds.

(b) *Responsibility of State agencies.* Readjustment allowances are not payable when the State Employment Security Agency has been notified of an outstanding uncollectible overpayment of subsistence allowances, until the overpayment has been offset against readjustment allowances otherwise payable or the agency has been notified by the Veterans' Aministration regional office that the outstanding overpayment has been liquidated. (Veterans' Administration Inst. 10) (Title V, 58 Stat. 295; 38 U. S. C. 696)

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