

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 5****RIN 2900-AM06****Payments and Adjustments to Payments****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language provisions applicable to payment of VA benefits and adjustments to payments. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries and VA personnel in locating and understanding these rules.

DATES: Comments must be received by VA on or before December 30, 2008.

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026 (not a toll-free number). Comments should indicate that they are submitted in response to "RIN 2900-AM06—Payments and Adjustments to Payments." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment (not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

William F. Russo, Director of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-4902 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation

Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 "VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs." The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding general rate-setting and adjustment and resumption of benefits. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

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Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most of the provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. This organization will enable claimants, beneficiaries, and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See 71 FR 16464.*

"Subpart B—Service Requirements for Veterans" would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See 69 FR 4820.*

"Subpart C—Adjudicative Process, General" would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See 70 FR 24680.* The second, covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings, was published as proposed on May 22, 2007. *See 72 FR 28770.* The third, concerning

rules on filing VA benefits claims, was published as proposed on April 14, 2008. *See* 73 FR 20136.

“Subpart D—Dependents and Survivors” would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

“Subpart E—Claims for Service Connection and Disability Compensation” would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614. The second, relating to special ratings and ratings for health care eligibility only, was published as proposed on October 17, 2008. *See* 73 FR 62004.

“Subpart F—Nonservice-Connected Disability Pensions and Death Pensions” would include information regarding the three types of nonservice-connected pension: Old-Law Pension, Section 306 Pension, and Improved Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension and the effective dates governing each pension. This subpart will be published in two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578. The portion concerning eligibility and entitlement requirements, as well as effective dates for Improved Pension, was published as proposed on September 26, 2007. *See* 72 FR 54776.

“Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary” would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded; and various special rules that

apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

“Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors” would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

“Subpart I—Benefits for Certain Filipino Veterans and Survivors” would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

“Subpart J—Burial Benefits” would pertain to burial allowances. This subpart was published as proposed on April 8, 2008. *See* 73 FR 19021.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain provisions regarding bars to benefits, forfeiture of benefits, and renunciation of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

“Subpart L—Payments and Adjustments to Payments” would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, subpart L will be published in two separate NPRMs, one of which is this NPRM. The first, concerning payments to beneficiaries who are eligible for more than one benefit, was published as proposed on October 2, 2007. *See* 72 FR 56136. The second, concerning provisions applicable to payment of VA benefits and adjustments to payments, is the subject of this document.

The final subpart, “Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries,” would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and

pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted “[regulation that will be published in a future Notice of Proposed Rulemaking]” where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of This Notice of Proposed Rulemaking

This NPRM pertains to those regulations governing payment of benefits, adjustments to payments, and regulations related to resumption of benefits. These regulations would be contained in proposed Subpart L of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and those proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")	Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")	part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.
5.690	3.21	5.706(b)(16) through (22).	New.	
5.691(a)	3.260(g)	5.706(b)(23)	3.261(a)(14)	
5.691(b)	3.29(a) and (c)	5.706(b)(24)	New.	
5.691(c)	3.29(b)	5.707(a) and (b)	New.	
5.692	3.112	5.707(c)	3.261(b)(1), 3.262(l), 3.272(g)	
5.693(a)	3.31(a)	5.708(a)	3.256(b), 3.277(c)	
5.693(b)	Introduction to 3.31.	Introduction to 5.708(b).	3.277(c)(3)	
5.693(c)	3.31(b) and (c)	5.708(b)(1)	New.	
5.693(c)(1)	3.31(b)	5.708(b)(2)	3.256(b)(3), 3.277(c)(2)	
5.693(c)(2)	New.	5.708(c)	New.	
5.693(c)(3)	3.31(c)(1)	5.708(d)	3.661(a)(1) and (2)	
5.693(c)(4)	3.31(c)(3)	5.708(e)	3.256(c), 3.277(d)	
5.693(c)(5)	3.31(c)(4)	5.708(f)(1)	3.256(c), 3.277(d)	
5.693(c)(6)	3.31(c)(5)	5.708(f)(2)	New.	
5.693(c)(7)	3.31(c)(3)	5.708(f)(3)	3.661(b)(2)(i)	
5.693(c)(8)	3.31(c)(2)	5.708(g)	3.661(b)(2)(iii)	
5.693(c)(9)	3.656(a) and (d)	5.708(h)	3.661(b)(2)(ii)	
5.693(d)	3.401(e), 3.750	5.709(a)	3.256(a), 3.277(a) and (b), 3.660(a)(1)	
5.693(e)(1) and (e)(2)	3.31(c)(2)	5.709(b)	3.256(a), 3.277(b)	
5.693(e)(3)	Introduction to 3.31.	5.710(a)	3.651(a)	
5.694	3.20	5.710(b)	3.651(b)	
5.695(a)	3.57(a)(1)(iii)	5.710(c)	3.651(c)	
5.695(b)	3.57(a)(1)(iii), 3.667(a)(1) and (a)(2)	5.711(a)	3.656(a)	
5.695(c) and (c)(1)	3.667(a)(3)	5.711(b)	3.656(a)	
5.695(c)(2)	3.667(a)(4)	5.711(c)	3.656(d)	
5.695(c)(3)	3.667(a)(3)	5.711(d)(1)	3.656(b)	
5.695(d)	3.667(a)(5)	5.711(d)(2)	3.656(c)	
5.695(e)	New	5.712	3.158(c)	
5.695(f)	3.667(b)	5.713(a) through (b)(1).	3.653(a)	
5.695(g)	3.667(c)	5.713(b)(2) and (b)(3)	New.	
5.695(h)	3.667(d)	5.713(c)	New.	
5.695(i)	3.667(f)	5.714(a)	New.	
5.696	3.107	5.714(b)	3.653(c)(1)	
5.697(a)	Introduction to 3.32.	5.714(c) and (d)	3.653(c)	
5.697(a)(1)	3.32(a)(1)	5.714(e)	3.653(b)	
5.697(a)(2)	3.32(a)(2)	5.714(f)	New.	
5.697(b) and (c)	3.32(b)	5.715(a)	New.	
5.705(a)	Introduction to 3.500, 3.500(a), Introduction to 3.501, Introduction to 3.502, 3.503(a).	5.715(b)(1)	3.653(b)	
5.705(b)	New.	5.715(b)(2)	3.653(c)(3)	
5.706(a) and (b)	New.	5.715(b)(3)	3.653(b)	
5.706(b)(1)	3.261(a)(32)	5.715(c)	3.653(b)	
5.706(b)(2)	3.262(z), 3.263(h), 3.272(v), 3.275(j), 3.261(a)(41)	5.715(d)	3.653(b) and (c)(3)	
5.706(b)(3)	3.262(u), 3.263(f), 3.272(p), 3.275(g), 3.261(a)(36)	5.715(e)	3.653(d)	
5.706(b)(4)	New.	5.715(f)	New.	
5.706(b)(5)	3.262(s), 3.263(e), 3.272(o), 3.275(f), 3.261(a)(35)	Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a	3.653(b)	
5.706(b)(6)	3.262(y), 3.263(g), 3.272(u), 3.275(i), 3.261(a)(40)	3.262(t), 3.272(r), 3.261(a)(37)	3.653(b)	
5.706(b)(7)	New.	3.262(v), 3.272(r), 3.261(a)(37)	3.653(b)	
5.706(b)(8)	3.262(x), 3.272(t), 3.261(a)(39)	New.	3.653(b)	
5.706(b)(9) and (10)	3.262(y), 3.263(g), 3.272(u), 3.275(i), 3.261(a)(40)	3.262(q), 3.272(k), 3.261(a)(33) and (a)(34)	3.653(b)	
5.706(b)(11)	3.262(x), 3.272(t), 3.261(a)(39)		3.653(b)	
5.706(b)(12) through (14).	New.		3.653(b)	
5.706(b)(15)	3.262(q), 3.272(k), 3.261(a)(33) and (a)(34)		3.653(b)	

Content of Proposed Regulations*General Rate-Setting and Payments*

5.690 Where To Find Benefit Rates and Income Limits

Proposed § 5.690 is based on current § 3.21, with a few changes.

First, we propose to not include in part 5 the reference to appendix B of the Veterans Benefits Administration Manual M21-1 because the reference is outdated and because the rates are available at our Web site, which is easily available to the general public. The proposed regulation would guide readers to that site. Second, we propose to include a reference to the monthly allowances payable under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects. Adding this reference in connection with the general reference to the publication of rates on our Web site will direct readers to one location to find information about most of the rates for benefits payable under part 5.

Current § 3.21 involves monetary rates for VA benefits. The last two sentences of current § 3.21 read:

The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents [DIC] are set forth in § 3.25.

Although the rates and income limits for Improved Pension and parents' DIC were at one time contained in §§ 3.23 through 3.25, that is no longer the case. Moreover, the rates and income limits applicable to Improved Pension and parents' DIC, like the other VA benefits described above, are available on our Web site. Therefore, we propose not to include a reference to the part 5 equivalents of current §§ 3.23 through 3.25 in § 5.690.

5.691 Adjustments for Fractions of Dollars

Proposed § 5.691 provides rules regarding how VA rounds to the nearest dollar in various calculations. It restates in plain language current §§ 3.29 and 3.260(g).

Current § 3.260(g) includes rules governing the computation of income for both pension and parents' DIC. (DIC for surviving spouses and children is not based on income.) To clarify that, in the context of DIC, income calculations are relevant only as to parents' DIC, proposed § 5.691(a) would specifically refer to "parents' dependency and indemnity compensation" instead of "dependency and indemnity compensation."

Sections 5.531 through 5.534, cited in proposed § 5.691(a), were published as proposed on October 21, 2005. *See* 70 FR 61326, 61344–47. Section 5.370, also cited in proposed § 5.691(a), was published as proposed on September 26, 2007. *See* 72 FR 54776, 54792.

We have intentionally omitted from proposed § 5.691(c) the June 1, 1983, applicability date for rates of pension, found in current § 3.29(b). Because these regulations will apply only to claims filed on or after the effective date of part 5, which will be no earlier than 2011, it is exceedingly unlikely that these regulations will apply to pension awards retroactive earlier than 1984. We have also simplified the text for clarity.

5.692 Fractions of One Cent Not Paid

Proposed § 5.692 restates in plain language current § 3.112. VA intends no substantive change.

We note that, with respect to certain benefits, 38 U.S.C. 5312(c)(2) explicitly permits VA to round payments "in such manner as the Secretary considers equitable and appropriate for ease of administration." This statute, combined with VA's general rulemaking authority, gives VA authority to exclude fractions of a cent from payment. VA considers this practice equitable and necessary to efficiently administer the benefit programs covered by proposed 38 CFR part 5.

5.693 Beginning Date for Certain VA Benefit Payments

The Omnibus Budget Reconciliation Act of 1982 (OBRA), Pub. L. 97–253, 96 Stat. 763, introduced a number of Federal cost-saving measures. Section 401 of the OBRA, 96 Stat. at 801, which is now codified at 38 U.S.C. 5111, "Commencement of period of payment," prohibits VA from paying certain benefits for any period before the first day of the calendar month following the month in which the award or increased award of the benefit becomes effective. The provisions of 38 U.S.C. 5111 are currently implemented in § 3.31 and are the subject of proposed § 5.693. We propose several changes from the current regulation.

Proposed § 5.693(b) restates current § 3.31(b) and incorporates with one change the list in the introduction to § 3.31 of the benefits affected by the beginning payment date rule. The benefits affected are disability compensation, pension, dependency and indemnity compensation and monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects. The proposed change is that we not include the reference to Vietnam, which is found in current § 3.31. This change is required because the law no longer limits chapter 18 benefits to children of Vietnam-era service veterans. *See* Pub. L. 108–183, sec. 102, 117 Stat. 2651, 2653 (adding 38 U.S.C. 1821, "Benefits for children of certain Korea service veterans born with spina bifida"). Therefore, proposed § 5.693(b)(4) simply refers to payment of "monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects."

Proposed § 5.693(c) lists payments that are not subject to the general rule found in proposed paragraph (b). The list is derived from current § 3.31(b) and (c). We propose to add a payment not found in the current regulation. The new payment, found in proposed § 5.693(c)(2), pertains to "[a]wards restoring a previously reduced benefit because the circumstances requiring reduction no longer exist." VA does not consider such a restoration of a previously reduced award to be an "increased award" as defined by proposed § 5.693(a), but rather a restoration of the pre-adjustment rate. This award is more correctly viewed as a discontinuance of a temporary reduction and not an increase subject to the delayed payments described in proposed paragraph (b) of this section.

Next, we propose to restate with clarifying language an exception found in current § 3.31(c)(4). Current § 3.31(c)(4) includes an exception to the delayed payment provision of OBRA for increases resulting solely from the enactment of certain types of legislation and includes several examples. One example, found at § 3.31(c)(4)(iii), refers to "[c]hanges in the criteria for statutory award designations." The example is taken from examples in the joint House and Senate Committee Conference report regarding OBRA. *See* H.R. Conf. Rep. No. 97–759, at 82 (1982), as reprinted in 1982 U.S.C.C.A.N. 1846, 1877. Apart from this example, the term "statutory award" does not appear elsewhere in the report. Rather than use the term "statutory award" in part 5, we would refer in § 5.693(c)(5)(v) to an

"award of special monthly compensation." This is consistent with long-standing VA usage of the term "statutory award." For example, *Talbert v. Brown*, 7 Vet. App. 352, 354 (1995), involved entitlement to special monthly compensation under "a statutory award pursuant to Public Law No. 82–427." Public Law No. 82–427, 66 Stat. 295, introduced provisions currently codified in 38 U.S.C. 1114(k), which provides for special monthly compensation to veterans.

Finally, we propose not to include current § 3.31(c)(3)(vi) in part 5. The current regulation excludes an adjustment because of limitations placed on the size of the estate of a hospitalized incompetent veteran. However, the limitation in question was imposed by former 38 U.S.C. 5503(b), which was repealed by section 204(a) of the Veterans Education and Benefits Expansion Act of 2001, Pub. L. 107–103, 115 Stat. 976, 990.

Section 5.461, cited in proposed § 5.693(a)(4), was published as proposed on December 27, 2004. *See* 69 FR 77578, 77588–89. Section 5.745, cited in proposed § 5.693(d)(1), was published as proposed on October 2, 2007. *See* 72 FR 56136, 56149.

5.694 Surviving Spouse's Benefit for the Month of the Veteran's Death

Proposed § 5.694 is a plain language restatement of current § 3.20. The proposed regulation provides rules regarding payment to a surviving spouse for the month of the veteran's death. In proposed paragraph (a) we have created a term, "month-of-death benefit," to serve as shorthand for a payment to a deceased veteran's surviving spouse for the month in which the veteran died and in the amount of disability compensation or pension that the veteran would have received for that month, if not for his or her death. Using this term would make this section easier to read and help ensure clarity.

We propose not to include current § 3.20(a) in proposed § 5.694. Section 3.20(a) currently reads:

Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or [DIC] otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death. (Authority: 38 U.S.C. 5310)

Any award of benefits under current § 3.20(a) would pertain to a veteran who died between December 1, 1962, and September 30, 1982, more than 25 years ago. The only situation in which

payment of benefits under this paragraph could arise presently is in a retroactive benefit adjustment based on clear and unmistakable error. However, in such a case, VA would be required to apply the provisions of § 3.20(a) in effect at the time the erroneous decision was made, not the current provisions. Therefore, there is no reason to include § 3.20(a) in part 5.

Section 5.550, cited in proposed § 5.694(d), was published as proposed on October 1, 2004. *See* 69 FR 59072, 59085.

5.695 Payments to or for a Child Pursuing a Course of Instruction at an Approved Educational Institution

Proposed § 5.695 is based on current §§ 3.57(a)(1)(iii) and 3.667. The proposed section includes provisions related to payment of additional Improved Pension or disability compensation to a veteran or Improved Pension to a surviving spouse based on a child pursuing a course of instruction at an approved educational institution, and direct payment of Improved Pension or dependency and indemnity compensation (DIC) to a child on or after the child's 18th birthday, but before the child's 23rd birthday, if the child is pursuing a course of instruction at an approved educational institution. Proposed § 5.695(a) defines the term "approved educational institution" consistent with the definition of "educational institution" in § 3.57(a)(1)(iii).

Whereas current § 3.667(a)(1) and (2) merely indicate that benefits "may be paid," proposed § 5.695(b) specifies which benefits will be paid and to whom. This additional information, only implied by the current regulation, will be helpful to the reader. No substantive change is intended. Section 5.417, cited in proposed § 5.695(b), was published as proposed on September 26, 2007. *See* 72 FR 54776, 54799–800.

We have intentionally not included in proposed § 5.695(c) the reference to September 30, 1981, which appears in current § 3.667(a)(3). This date is not relevant to proposed part 5 because no claim adjudicated under part 5 could pertain to a child then between the ages of 18 and 23 who was age 18 before September 30, 1981. Section 5.573, cited in proposed § 5.695(c), was published as proposed on October 21, 2005. *See* 70 FR 61326, 61348.

Section 5.524, cited in proposed § 5.695(d), was published as proposed on October 21, 2005. *See* 70 FR 61326, 61344.

Proposed § 5.695(e) explains that if a child is pursuing a course of instruction at an approved educational institution

on or after the child's 18th birthday and a claim is not received within 1 year, benefits may still be paid to the child effective the date VA receives the child's claim. We propose to include this provision in order to fill a deficiency in the current regulation. The provision is consistent with 38 U.S.C. 5110 (the general effective date statute) and other effective-date provisions found in proposed part 5. It will provide valuable information for regulation users and VA personnel.

Section 5.764, cited in proposed § 5.695(i)(1), was published as proposed on October 2, 2007. *See* 72 FR 56136, 56154.

5.696 Awards of Dependency and Indemnity Compensation When Not All Dependents Apply

Proposed § 5.696 is based on current § 3.107. We have updated the citation to § 3.251(a)(4), contained in current § 3.107, to the proposed part 5 counterpart § 5.536(d), which was published as proposed on October 21, 2005. *See* 70 FR 61326, 61347. Although the language is much clearer in this part 5 regulation, we have not made any substantive changes from current § 3.107.

5.697 Exchange Rates for Income Received or Expenses Paid in Foreign Currencies

Proposed § 5.697 is derived from current § 3.32. The current regulation provides rules pertaining to income received or expenses paid in foreign currencies. We propose the following changes from the current regulation.

Proposed § 5.697(a)(1) states that if VA is informed of a change in a beneficiary's income or expenses paid in a foreign currency that would affect his or her entitlement, VA will make retroactive adjustments to the benefit rate using the quarterly exchange rate in effect when VA receives the notice of the change in income received or expenses paid in a foreign currency.

Current § 3.32(b) references "burial, plot or headstone allowances." We propose to use the phrase "burial benefits" instead of using the current phrase, "burial, plot or headstone allowances," to be consistent with the term that we expect to use to describe monetary burial benefits in subpart J of part 5, which is currently being developed by VA.

Sections 5.550 and 5.555, cited in proposed § 5.697(c)(1), were published as proposed on October 1, 2004. *See* 69 FR 59072, 59085–86.

General Reductions, Discontinuances, and Resumptions

5.705 General Effective Dates for Reduction or Discontinuance of Benefits

Currently, §§ 3.500 through 3.503 set forth rules that govern how VA assigns an effective date to a reduction or discontinuance of disability compensation, pension, or dependency and indemnity compensation (DIC).

Each of the reduction and discontinuance effective-date regulations contains general rules on the subject. Each regulation also contains multiple paragraphs that apply to a specific, narrow basis for reduction or discontinuance of benefits payable to a specific type of beneficiary. In view of our proposal to organize by benefit and topic the part 5 rewrites of the current part 3 regulations, the specific rules in §§ 3.500 through 3.503 will be organized in the part 5 subpart associated with the specific benefits or subjects to which they apply. Proposed § 5.705 includes generally applicable rules, based on §§ 3.500 through 3.503.

In 38 U.S.C. 5112(a), Congress requires VA to generally fix a reduction or discontinuance of compensation, pension, or DIC "in accordance with the facts found," "[e]xcept as otherwise specified in [38 U.S.C. 5112]." Proposed § 5.705(a) states this general rule. We propose to include the monetary allowances under chapter 18 of title 38, United States Code, in the list of benefits to which the general rule applies. Although 38 U.S.C. 5112 does not refer to chapter 18 benefits, 38 U.S.C. 1832(b)(4) makes provisions of 38 U.S.C. 5112(a) and (b) applicable to monetary allowances under chapter 18.

In 38 U.S.C. 5112(b), Congress provides ten specific exceptions to the general rule. In such situations, the effective date of the reduction or discontinuance "shall be" assigned as directed in the particular paragraph of section 5112(b), and not as directed by the general "facts found" provision in section 5112(a). Thus, section 5112 permits the assignment of an effective date for a reduction or discontinuance in accordance with the facts found only when there is no specific provision requiring VA to assign the effective date on some other basis. This interpretation is consistent with general rules of statutory interpretation (*i.e.*, that a specific rule modifies a more general one) and decisions from the Court of Appeals for Veterans Claims on this subject.

Accordingly, we have retained the basic concepts from the introductory language to current § 3.500 and § 3.500(a), and modified them to

enhance the clarity of the current provisions. The first sentence of proposed § 5.705(a) restates the current language as follows: "Except as otherwise provided, VA will assign an effective date for the reduction or discontinuance of disability compensation, pension, dependency and indemnity compensation (DIC), or the monetary allowances under chapter 18 of title 38, United States Code, in accordance with the facts found."

The introductory text to current § 3.500 also states that "[t]he effective date * * * will be the earliest of the dates stated in these paragraphs unless otherwise provided." Sections 3.501, 3.502, and 3.503(a) all provide that "[t]he effective date * * * will be the earliest of the dates stated in this section." Current §§ 3.501 through 3.503 do not reference § 3.500. The wording in the current sections implies that each section exclusively provides the effective date of a reduction or discontinuance of benefits to the class of beneficiaries covered in the particular section. The language does not explicitly acknowledge that § 3.500 provides the default rule when none of the specific provisions in §§ 3.501 through 3.503 apply. The part 5 rule would be explicit in this regard.

Additionally, if a specific paragraph in § 3.500 applies and there is no applicable provision in §§ 3.501 through 3.503, then the specific paragraph in § 3.500 applies. For example, when a surviving spouse's right to receive benefits is discontinued based on his or her renunciation of the benefit, an event that is not covered under § 3.502, the effective date is assigned in accordance with § 3.500(q). For these reasons, VA applies § 3.500 in cases involving veterans, surviving spouses, parents and children, notwithstanding that §§ 3.501 through 3.504 appear to exclusively provide the effective dates of reductions and discontinuances applicable to those beneficiaries. Thus, the proposed part 5 rule clearly states the general applicability of § 5.705 but does not represent a substantive change in VA practice or policy.

The second sentence of proposed § 5.705(a) reads: "If more than one effective-date provision applies to a particular issue or event, VA will reduce or discontinue the benefit(s) in accordance with the earliest applicable date." This language restates similar references to the "earliest date," which appear in current §§ 3.500 through 3.503. The proposed language is easier to understand and apply, but it will not substantively alter VA's current interpretation of the governing statute or VA's regulations.

The introductory paragraphs to §§ 3.500 through 3.502 and § 3.503(a) identically state a general effective-date provision, "Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit." In the last sentence of proposed § 5.705(a) we propose to restate this provision as follows: "VA will pay a reduced rate or discontinue benefits effective the date of reduction or discontinuance." Stating the effective date in this manner—focusing only on the date that the new rate begins rather than on the date that the old rate ends—clarifies the effective-date provisions for reductions and discontinuances. We propose similar wording throughout part 5. VA intends no substantive change by this rewording.

Under proposed § 5.705(a), as with the current rules, benefits are subject to reduction on the earliest applicable date. In view of that requirement, it would be useful to provide a reference tool in order to help VA and claimants locate the effective-date provisions throughout part 5. Proposed § 5.705(b) is reserved for a table with the locations of specific reduction and discontinuance rules once part 5 is published in the **Federal Register**. For the benefit of persons reviewing this NPRM, we have included a table to notify readers of the effective-date provisions that we intend to reference in the final version of this paragraph. We do not intend that proposed § 5.705(b) contain any substantive rules. In § 5.705(b), we make a statement to this effect, to prevent the reliance on this chart by claimants or adjudicators. When considering the issue of effective date, users of part 5 should apply the specific regulation referenced in the chart, rather than rely on the chart itself.

As proposed, the table shows both already published and as yet unpublished Part 5 sections. The unpublished sections are included as placeholders; many may change before publication. Section 5.101 of Subpart C was published as proposed on May 10, 2005. *See* 70 FR 24680. Proposed §§ 5.152, 5.165, and 5.177 of Subpart C were published as proposed on May 22, 2007. *See* 72 FR 28770. The Subpart D provisions were published as proposed on September 20, 2006. *See* 71 FR 55052. Section 5.477 of Subpart F was published as proposed on December 27, 2004. *See* 69 FR 77578. Sections 5.568 to 5.572 of Subpart G were published as proposed on October 1, 2004. *See* 69 FR 59072. A correction to proposed § 5.570 was published on October 21, 2004. *See* 69 FR 61914. Sections 5.524, 5.573, and 5.574 of Subpart G were published as

proposed on October 21, 2005. *See* 70 FR 61326. The Subpart H provisions were published as proposed on March 9, 2007. *See* 72 FR 10860. The Subpart I provisions were published as proposed on June 30, 2006. *See* 71 FR 37790. The Subpart K provisions were published as proposed on May 31, 2006. *See* 71 FR 31056.

5.706 Payments Excluded in Calculating Income or Net Worth

Proposed § 5.706 contains a list of payments that are excluded by VA in calculating income or net worth for those benefits that are based on financial need, which are: Improved Pension, Section 306 Pension, Old-Law Pension, and parents' dependency and indemnity compensation (DIC).

Financial need is also the basis for establishing dependency of parents in veterans' disability compensation cases. The specific rules related to income and net worth limits for these five benefits are located in the subpart dealing with each specific benefit. However, there are certain payments that are excluded from income and net worth by Federal statute for all Federal need-based programs. Proposed § 5.706 contains a list of these payments. It will be helpful to consolidate all of these exclusions into one location and in table form.

Current § 3.261 contains a table listing the exclusions from countable income for Old-Law Pension, Section 306 Pension, parents' DIC, and dependency of parents. Current § 3.263 contains exclusions from net worth for Section 306 Pension and dependency of parents. Current § 3.272 contains exclusions from countable income for Improved Pension, and current § 3.275 contains exclusions from net worth for Improved Pension. Exclusions common to each VA need-based benefit are included in table form in proposed § 5.706(b). The exclusions that are not common to each VA need-based benefit are contained in the regulations pertaining to the individual benefit. In addition, we propose to include in this table certain statutory exclusions from countable income or net worth that are not included in part 3.

Proposed § 5.706(b)(1) would exclude, from countable income, relocation payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), Pub. L. 91-646, 84 Stat. 1894. Current § 3.261(a)(32) excludes relocation payments under Public Law No. 90-448 and Public Law No. 90-495. However, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 repealed these relocation payment

provisions and exclusions. Section 216 of the 1970 Act provides that payments made under the Act are to be excluded from countable income. *See* 42 U.S.C. 4636.

Proposed § 5.706(b)(4) excludes from countable income and net worth consideration, payments made to individuals because of their status under Pub. L. 103-286, as victims of Nazi persecution. The exclusion of this source of income will implement this statute, which is not implemented by a part 3 regulation.

Proposed § 5.706(b)(7) excludes certain appropriations to comply with judgments of the Indian Claims Commission and the Court of Federal Claims that are held under the Indian Judgment Funds Use and Distributions Act (25 U.S.C. 1401 et seq.) or another act of Congress.

Proposed § 5.706(b)(8) excludes from income and net worth consideration the interests of individual Indians in trust or restricted lands. The current regulations under §§ 3.262(v) and 3.272(r) only exclude income of up to \$2,000 per calendar year received by American Indian beneficiaries from trust or restricted lands. Pursuant to 25 U.S.C. 1408, interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to \$2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income. Therefore, in order to extend the exclusion to net worth consideration, proposed § 5.706(b)(8) would exclude from net worth the interests received by individual Indians from trust or restricted lands.

Proposed § 5.706(b)(9) excludes from income and net worth consideration income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes in accordance with 25 U.S.C. 459. Proposed § 5.706(b)(10) excludes from income and net worth consideration up to \$2,000 of per capita distributions under the Old Age Assistance Claims Settlement Act (25 U.S.C. 2301 et seq.). The exclusions described in § 5.706(b)(9) and § 5.706(b)(10) will implement statutory provisions which were not implemented in part 3.

Proposed § 5.706(b)(11) excludes from income and net worth consideration, any income or asset received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626). Current §§ 3.262(x) and 3.272(t) exclude the following payments from income consideration: cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual

per year; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. The Alaska Native Claims Settlement Act (43 U.S.C. 1626) provides that the income or asset received from a Native Corporation shall not be considered or taken into account as an asset or resource. Therefore, in order to extend the exclusion to net worth consideration, proposed § 5.706(b)(11) would exclude from net worth the cited income and assets listed in this paragraph.

Proposed § 5.706(b)(12) excludes from income and net worth consideration payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721 et seq.). The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(13) excludes from income consideration allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931), which provides that allowances, earnings, and payments to individuals participating in programs under the Act shall not be considered as income for the purposes of determining eligibility for, and the amount of income transfer and in-kind aid furnished under, any Federal or federally assisted program based on need. There is no resource exemption. Therefore, proposed § 5.706(b)(13) would only exclude from income consideration income derived from the Workforce Investment Act of 1998. The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(14) excludes from income consideration allowances, earnings, and payments to AmeriCorps participants. Pursuant to 42 U.S.C. 12637, allowances, earnings, and payments to individuals participating in programs under subchapter I of title 42 shall not be considered as income for the purposes of determining eligibility for, and the amount of income transfer and in-kind aid furnished under, any Federal or federally assisted program based on need. There is no resource exemption. Therefore, proposed § 5.706(b)(14) would only exclude from income consideration income derived from the National and Community Service Act of 1990. The exclusion of this source of income will implement this statute, which is not implemented in part 3.

Current § 3.262(q) and § 3.272(k) list excludable income from various Federal volunteer programs without reference to net worth consideration. Through a series of legislative changes, these programs are now administered by the Corporation for National and Community Service rather than by the agencies listed in § 3.262(q) and § 3.272(k). *See* Pub. L. 103-82, 107 Stat. 785. Section 5044(f) of title 42, United States Code, provides that payments made under the act which created the Corporation for National and Community Service, with certain exceptions, do not reduce or eliminate assistance that volunteers may be receiving under other programs. We propose to account for this change in the law by providing, in § 5.706(b)(15), that payments received from any of the volunteer programs administered by the Corporation for National and Community Service would be excluded from income and net worth.

Proposed § 5.706(b)(16) excludes from income and net worth consideration the value of the allotment provided to an eligible household under the Food Stamp Program. Proposed § 5.706(b)(17) excludes from income and net worth consideration the value of free or reduced price for food under the Child Nutrition Act of 1966 (42 U.S.C. chapter 13A). Proposed § 5.706(b)(18) excludes from income and net worth consideration the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. chapter 105). Proposed § 5.706(b)(19) excludes from income and net worth consideration the value of services, but not wages, provided to a resident of an eligible housing project under a congregate services program under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. chapter 130). Finally, proposed § 5.706(b)(20) excludes from income and net worth consideration the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. chapter 94). The exclusion of the five sources of income will implement these statutes not implemented in part 3.

Proposed § 5.706(b)(21) excludes from income consideration payments, other than wages or salaries, received from programs funded under the Older Americans Act of 1965 (42 U.S.C. chapter 35). In accordance with 42 U.S.C. 3020a(b), such payments may not

be treated as income or benefits for the purpose of any other program or provision of Federal or State law. The exclusion of this source of income will implement this statute not implemented in part 3.

Proposed § 5.706(b)(22) excludes from income and net worth consideration, amounts of student financial assistance received under Title IV of the Higher Education Act of 1965, including Federal work-study programs, under Bureau of Indian Affairs student assistance programs, or vocational training under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. chapter 44). The exclusion of this source of income will implement this statute, which is not implemented in part 3.

Proposed § 5.706(b)(24) excludes from income and net worth consideration, payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card (42 U.S.C. 1395w-141(g)(6)).

5.707 Deductible Medical Expenses

Proposed § 5.707, based on current §§ 3.261(b)(1), 3.262(l), and 3.272(g), pertains to medical expenses that are deducted from countable annual income. In § 5.707, we propose to define the categories of expenses that will be considered “medical expenses.”

Paragraph (a) of proposed § 5.707 cites several other proposed rules that were published in prior Notices of Proposed Rulemaking: § 5.413 Income deductions for calculating adjusted annual income (regarding Improved Pension), 72 FR 54776, 54797-98 (Sept. 26, 2007), § 5.474 Deductible Expenses for Section 306 Pension Only, 69 FR 77578, 77591-92 (Dec. 27, 2004), and § 5.532 Deductions from income (regarding parents’ DIC), 70 FR 61326, 61345 (Oct. 21, 2005).

Proposed § 5.707(b) defines the term “licensed healthcare provider.” We propose to inform regulation users that individual states are responsible for such licensing. We also propose to list examples of licensed healthcare providers.

For Improved Pension, the authority for VA to deduct from countable annual income a portion of amounts paid for unreimbursed medical expenses derives from 38 U.S.C. 1503(a)(8). For parents’ dependency and indemnity compensation (DIC), the authority for VA to deduct unusual medical expenses from countable annual income derives from 38 U.S.C. 1315(f)(3). For Section 306 Pension, such authority derives from section 306 of Pub. L. 95-588, 92 Stat. 2508, which provides that

beneficiaries who do not wish to elect Improved Pension may continue to receive the pension amount they were receiving on December 31, 1978, subject to certain applicable laws that existed on that date. The applicable law pertaining to medical expenses on that date was 38 U.S.C. 503(c) as in effect on December 31, 1978. (Section 503 was later renumbered section 1503). VA has identified specific types of expenses that will be considered deductible “medical expenses,” because that term is not defined by statute. We propose to group these specific types of expenses into broad categories, as listed in paragraph (c) of the proposed rule.

Proposed § 5.707(c) explains that the term “medical expenses” includes payments made for care by a licensed healthcare provider, medical supplies and medications, adaptive equipment, transportation, health insurance premiums, and institutional forms of care and in-home attendants. We propose to include in paragraph (c) detailed provisions relating to the broad categories of medical expenses. Proposed § 5.707(c)(2) will state that vitamins will be deducted as a medical expense only if the individual is directed by a “healthcare provider authorized to write prescriptions” to take the vitamins. These clarifications provide further guidance as to allowable medical expenses.

Proposed § 5.707(c)(6) includes details relating to medical expenses paid for different forms of institutional care. Institutions such as nursing homes, custodial institutions, soldiers’ and sailors’ homes, or veterans’ homes often provide a range of “services,” which may include healthcare. In such settings, VA wishes to ensure that deductions from countable annual income reflect Congress’ intent that amounts be deducted for “medical expenses” only, and not for other primary or incidental services. For example, if fees are paid to an institution that houses and maintains an individual because the individual needs to live in a protected environment (see proposed paragraph (c)(6)(iv), “Custodial Care”), the portion of the fees paid for medical treatment will be deducted from countable annual income. However, the portion of the fees paid for strictly custodial care will not be deducted. Similarly, VA may deduct fees paid to a nursing home if the individual is there as a “patient” and not merely as a “resident.” Individuals in veterans’ homes or soldiers’ and sailors’ homes may have expenses deducted if they are actually receiving medical care, but expenses will not be

deducted merely for domiciliary functions performed by the homes.

5.708 Eligibility Verification Reports

Proposed § 5.708 combines provisions from current §§ 3.256, 3.277, and 3.661 with a few substantive changes. The proposed regulation includes rules regarding when VA will require claimants and beneficiaries to complete an eligibility verification report (EVR).

Proposed § 5.708(a)(1) would define an EVR. The current regulations, §§ 3.256(b) and 3.277(c) require the use of an EVR in certain circumstances, such as to obtain a social security number or to obtain certain information from a beneficiary receiving parents’ dependency and indemnity compensation (DIC) or pension. Requiring an EVR under these circumstances is unnecessarily restrictive and burdensome to both VA personnel and the beneficiary who must file the EVR. In some cases, verifying a social security number can be achieved by sending a simple form letter or by making a direct telephone call to the individual. Hence, an EVR is defined as a “form that VA may use to obtain” certain information, rather than as a “form that VA shall use to obtain” that information.

Current § 3.661(b)(2) uses the term, “12-month annualization period” to describe the reporting period for which a beneficiary reports income, adjustments to income, and net worth to VA. We propose to use the term “reporting period” instead of “12-month annualization period,” for ease of use by claimants, beneficiaries, VA claims examiners, and other interested parties. We therefore propose in paragraph (a) to include a definition of “reporting period” and to use that term in § 5.708 and § 5.697.

In order to provide flexibility to VA personnel, we propose to use in § 5.708(b) the word “may” in place of the word “shall,” which will give VA the option of not using an EVR to obtain some types of information. In addition, we would make this new, permissive rule applicable to both claimants and beneficiaries, in order to improve VA’s ability to process both claims and ongoing awards, by incorporating into § 5.708(b)(1), long-standing VA practice regarding when to send an EVR. Therefore, proposed paragraph (b) provides the circumstances under which EVRs “may” be sent to beneficiaries and claimants.

Proposed § 5.708(c) includes an important exception regarding sending an annual EVR to certain parents’ DIC beneficiaries. Specifically, 38 U.S.C. 1315(e) states that when a parent has

reached the age of 72 and has been receiving parents' DIC during 2 consecutive calendar years, the parent will not be required to annually report their income by filing an EVR. However, § 1315(e) does require that a parent receiving parents' DIC notify VA whenever there is a material change in his or her annual income and we have incorporated this requirement in paragraph (c). The text in paragraph (c) of proposed § 5.708(c) is an exception to the general rule stated in paragraph (b) and we have pointed that out in the introductory paragraph of (b).

Proposed § 5.708(d) specifies actions VA may take upon receipt of information or an EVR. Current part 3 provisions contain an explanation of the actions VA takes upon receipt of an EVR from a beneficiary. Missing, however, is an explanation of the action VA takes when an EVR is received from a claimant. This explanation is necessary to completely address actions VA will take regarding EVRs received from claimants and beneficiaries. In addition, because paragraph (b) of this rule would make the use of an EVR optional, paragraph (d) states the action VA may take upon receipt of either an EVR or information from a claimant or a beneficiary.

Proposed § 5.708(d) also describes generally the action VA takes when the expected annual income is uncertain. This provision is based on current § 3.661(a)(2). We have updated the citations to §§ 3.260(b) and 3.271(f), contained in current § 3.661(a)(2), to the proposed part 5 counterparts. See 69 FR 77578, 77593 (Dec. 27, 2004) (proposed § 5.478(a)); 70 FR 61326, 61345 (Oct. 21, 2005) (proposed § 5.531(e)); 72 FR 54776, 54801 (Sept. 26, 2007) (proposed § 5.423).

Proposed § 5.708(f) provides for the action VA will take when a beneficiary does not return a completed EVR in a timely manner. We are proposing to incorporate a long-standing VA practice which is helpful to beneficiaries in proposed § 5.708(f)(2). VA's practice is that when a beneficiary submits an incomplete EVR within 60 days after the date VA requested the EVR, VA will notify the beneficiary that the EVR is incomplete and inform him or her of the additional information needed to complete it. If VA does not receive a completed EVR within 120 days after the date VA first requested the EVR from the beneficiary, VA will immediately suspend further benefit payments.

Current § 3.661(b)(2)(i) was once applicable when VA used the "annualization period" as the period for which income is reported by the

beneficiary. VA is now using the 12-month calendar year as its annual reporting period. Section 5.708(f)(3) is a plain language rewrite of the applicable provision of current § 3.661(b)(2)(i) to reflect the change in the annual reporting period. VA intends no substantive change by this rewording.

Current § 3.661(b)(2)(iii) allows VA to resume the payment of benefits from the date they were stopped (because a beneficiary failed to return an EVR) if VA receives information requested in the EVR within 1 year after the end of the 12-month period for which the beneficiary had been asked to provide the EVR. Current § 3.661(b)(2)(ii), titled "Adjustment of overpayment," however, reads:

If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an [EVR] is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an [EVR].

This paragraph means that if information requested in an EVR is provided by a beneficiary more than 1 year after the end of the 12-month period for which VA requested the EVR, retroactive payments may be paid only for the purpose of reducing or eliminating any overpayment created as a result of loss of entitlement during that same EVR reporting period. In other words, current § 3.661(b)(2)(ii) limits the payment of retroactive benefits to the amount of the overpayment created as a result of the failure to return an EVR if VA does not receive the EVR timely. We propose to clarify the current language in proposed § 5.708(h).

Finally, we propose not to include current §§ 3.256(b)(2) and 3.661(b)(1) in part 5. The current sections permit VA to require that beneficiaries receiving Old-Law Pension and Section 306 Pension complete an EVR and provide the effective date for discontinuance of those benefits for failure to return a completed EVR. However, eligibility for these two programs is limited to individuals who have been continuously entitled to receive benefits under one of these programs from the dates they were superseded until the present. The last date eligibility could be established for Old-Law Pension was June 30, 1960, and the last date eligibility could be established for Section 306 Pension was December 31, 1978. The majority of individuals entitled to receive benefits under these two programs are advanced in age, and their population is rapidly declining; currently, fewer than 100,000 such beneficiaries exist. For these reasons,

VA no longer requests EVRs from individuals receiving benefits under these two pension programs.

5.709 Claimant and Beneficiary Responsibility To Report Changes

Proposed § 5.709 is a combination of some of the provisions in §§ 3.256, 3.277, and 3.660. Proposed paragraph (a) restates concepts from current §§ 3.256(a), 3.277(a) and (b), and 3.660(a)(1), which require that pension or parents' DIC claimants or beneficiaries promptly notify VA of changes in the factors that affect entitlement to those benefits. Both § 3.256(a) and § 3.277(a) and (b) require a claimant or beneficiary to "promptly notify" VA of changes, while § 3.660(a)(1) requires a beneficiary to provide notification "when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes." Although worded differently, all three provisions contain comparable notification requirements, which are intended to mean that a claimant or beneficiary must promptly notify VA when that person becomes aware of changes in the factors that affect entitlement. Therefore, proposed § 5.709(a) requires that claimants and beneficiaries "promptly notify VA of any material change" that would affect entitlement to pension or parents' DIC.

Current § 3.277(a) gives VA authority to require "information, proofs, and evidence" from an individual as needed to "determine the annual income and the value of the corpus of the estate of" a pension claimant or beneficiary. We include this authority in proposed § 5.709(a) too. However, proposed § 5.709(a) does not include the word "proofs." We note that the word "proofs" is antiquated and may confuse some regulation users. We therefore propose to omit the word "proofs" from the phrase and use "information and evidence" in proposed § 5.709(a).

Proposed § 5.709(b) sets forth the factors affecting entitlement to pension and parents' DIC which change most frequently. In keeping with our goal of rewriting and reorganizing part 3 regulations in a user-friendly format, it would be helpful to consolidate all of these factors into a reference table. Proposed § 5.709(b) includes this table along with a few clarifications of some of the provisions in current §§ 3.256 and 3.277. We do not intend that proposed § 5.709(b) confer any substantive rights.

The first clarification concerns current §§ 3.256(a)(4) and 3.277(b)(4). The current paragraphs provide that claimants and beneficiaries must notify VA of changes in "[n]ursing home

patient status." However, the notification requirement only applies to veterans and surviving spouses claiming or receiving pension and parents claiming or receiving parents' DIC. The table in proposed § 5.709(b) would indicate that nursing home status is a factor affecting entitlement to pension for veterans and surviving spouses and DIC for parents.

Second, current § 3.660(a)(1) requires that a veteran, surviving spouse, or child receiving pension, or a parent receiving death compensation or parents' DIC, must notify VA "of any * * * dependency status changes." This may lead some readers to erroneously conclude that a veteran's parent or a surviving child must report changes in the number of children he or she has. However, the number of children a claimant or beneficiary has is a factor that affects entitlement only when the claimant or beneficiary is a veteran or surviving spouse. Proposed § 5.709(b) makes this clear.

Section 5.220, cited in proposed § 5.709(b), was published as proposed on September 20, 2006. See 71 FR 55052, 55069. Section 5.411(b), also cited in proposed § 5.709(b), was published as proposed on September 26, 2007. See 72 FR 54776, 54796. Section 5.473, also cited in proposed § 5.709(b), was published as proposed on December 27, 2004. See 69 FR 77578, 77591.

5.710 Adjustment in Benefits Due to Reduction or Discontinuance of a Benefit to Another Payee

Proposed § 5.710 is a plain language rewrite of current § 3.651 and provides rules for adjustments to a beneficiary's payments when a benefit to another payee is reduced or discontinued. VA intends no substantive change by this rewording.

5.711 Payment to Dependents Due to the Disappearance of a Veteran for 90 Days or More

Proposed § 5.711 is based on current § 3.656 and provides that when a veteran disappears for 90 days or more, benefits may be paid to the veteran's dependents.

Current § 3.656 refers to payment "to or for" a veteran's dependents. We propose to omit the "or for" qualifier in § 5.711. A number of regulations in current part 3 refer to payment of various VA benefits "to or for" a veteran, a child, or a surviving spouse. This language as used in current § 3.656 is used to indicate that a payment may be made directly to a beneficiary or to a fiduciary for that beneficiary. A typical example of the latter would be

payment to a child's parent or guardian as the fiduciary of a VA beneficiary who is a minor. Another example would be payment to a VA-appointed fiduciary on behalf of an incompetent beneficiary. However, we note that although VA disability compensation and pension benefits are always potentially payable to a fiduciary for a VA beneficiary when the conditions warrant, the "to or for" phrase may be confusing to some regulation users. Further, inasmuch as benefits are always potentially payable to a fiduciary for a beneficiary, it is not necessary to state that explicitly in every regulation. Therefore, we have omitted the "or for" qualifier in proposed § 5.711. Interested persons may find rules relating to payment through fiduciaries in 38 CFR part 13, and that topic will also be addressed in subpart M of proposed part 5. We intend no substantive change by omission of the "or for" language.

In addition, current § 3.656(a) uses the word "parents." This word has the potential to confuse readers because a parent must first be established as a dependent of a veteran who was in receipt of disability compensation at the time of the veteran's disappearance in order to be considered for benefits as a dependent parent. Under 38 U.S.C. 1158, where a veteran receiving disability compensation disappears, VA may pay the compensation otherwise payable to the veteran, to the veteran's "parents." The amount of such payments may not exceed the amount payable to the parents if the veteran had died from a service-connected disability. Because only dependent parents are eligible for parents' DIC benefits, no benefits would be payable to a non-dependent parent under § 1158. Therefore, we are proposing to use the term "dependent parents" instead of "parents" in proposed § 5.711(b).

We also propose to replace the language "date of last payment" (used in current § 3.656(a) and other part 3 sections) throughout this rulemaking with "the first day of the month after the month for which VA last paid benefits," which is clearer and more specific. No substantive change is intended by this change.

Current § 3.656(a) states that if a veteran is missing for 90 days or more, VA will pay the veteran's dependents the lesser of the DIC which would be payable if the veteran had died from a service-connected cause or the amount of disability compensation when the veteran disappeared. In proposed § 5.711(b)(1) we clarify how VA distributes such payments: if VA pays DIC pursuant to this paragraph, then it will pay benefits to the dependents as

if the veteran were deceased, and if VA pays disability compensation pursuant to this paragraph, then it will pay benefits in equal amounts to the dependents. These payment methods are fair to dependents and are simple for VA to administer.

Current § 3.656(b) states that if a missing veteran's whereabouts become known VA will discontinue the award to the dependents and "appropriate action will be taken to adjust the veteran's award in accordance with the facts found." We have not included this quoted material in proposed § 5.711 because this section pertains to payments made to dependents of missing veterans. Proposed § 5.712, which pertains to payments made to veterans who are missing and later found, includes this material.

Current § 3.656(d) references Improved Pension, Section 306 Pension, and Service Pension. Service Pension is the name for Spanish American War Pension. See 38 CFR 3.1(x). There are no Spanish American War veterans still living, so it would be inappropriate to include the term "Service Pension" in proposed § 5.711(c)(1).

Section 5.502, cited in proposed § 5.711(d), was published as proposed on October 21, 2005. See 70 FR 61326, 61341.

5.712 Suspension of VA Benefits Due to the Disappearance of a Payee

Proposed § 5.712 concerns the suspension and resumption of benefits for a payee whose whereabouts are or were unknown. Proposed § 5.712(a) states VA's long-standing practice to suspend benefit payments when a payee's whereabouts are unknown. If the payee is ultimately located, VA pays the suspended benefits to him or her, so the payee is not deprived of any payments. Title 38, United States Code, requires VA to pay benefits to those who are entitled. Ensuring that benefit payments are received by the payee is an inherent part of that duty.

Current § 3.158(c) provides for resumption of payments if the payee's whereabouts become known. This concept has been restated in plain language in proposed § 5.712(b). VA intends no substantive change by this rewording.

The last sentence of proposed § 5.712(b) states, "Retroactive payments under this paragraph (b) will be reduced by the amount of any payments made to a veteran's dependents under § 5.711." During the period of suspension, 38 U.S.C. 1158 and 1507 (the statutory authorities for § 5.711) authorize VA to reallocate disability compensation or pension to the veteran's dependents.

The benefits paid under § 5.711 are those benefits that would be otherwise payable to the veteran if not for his or her disappearance. Therefore, when a veteran's whereabouts become known and his or her benefits are restored, VA will not pay the veteran benefits that have already been paid to dependents. This rule is not explicitly stated in part 3 but we have included it in § 5.712(b).

5.713 Restriction on VA Benefit Payments to an Alien Located in Enemy Territory

Current § 3.653 describes two different types of restrictions on the payment of VA benefits to persons located in foreign countries. Provisions relating to these restrictions are included in proposed §§ 5.713 (the withholding of benefits to an alien located in enemy territory) and 5.714 (the withholding of checks sent to foreign countries specifically listed by the Department of the Treasury). Provisions regarding claims for undelivered or discontinued benefits affected by these restrictions are stated in proposed § 5.715.

Proposed § 5.713 addresses the first restriction and would implement 38 U.S.C. 5308, "Withholding benefits of persons in territory of the enemy." Proposed § 5.713(b), which is based on current § 3.653(a), permits payment to an alien's dependents of the benefits discontinued under this section. A change from the current section would include language that more closely follows 38 U.S.C. 5308(c). Specifically, proposed paragraph (b)(1) provides that VA may apportion and pay all or any part of the alien's benefits to his or her dependents, up to the amount the dependents would receive if the alien were dead.

Proposed § 5.713(b) also regulates the reduction or discontinuation of payments to the alien's dependents. Because VA will often have no way of knowing when an alien leaves enemy territory, and to avoid creation of unnecessary overpayments, payments to dependents will be discontinued effective as of the date VA receives notice that the alien is no longer located in enemy territory or under enemy control. In addition, proposed § 5.713(b) provides that benefit payments to the alien's dependents will be reduced or discontinued, as required by law, upon the death of the alien or dependent, upon reduction or discontinuation of the alien's benefits, or cessation of dependent status.

Current § 3.653(a) is limited to compensation, pension and DIC. However, we note that under 38 U.S.C. 5308(a), the rule applies to any award of

"gratuitous benefits under the laws administered by the Secretary."

Paragraph 7 of VAOPGCPREC 06-91, 56 FR 25156 (June 3, 1991), states that:

7. Interim Issue (CONTR-169), dated January 13, 1960, providing necessary instructions for the fiscal implementation of Pub. L. 86-146, provides in paragraph D.3 in pertinent part:

"a. Immediately upon death of a veteran who has been adjudged or rated incompetent, the balance in the Personal Funds of Patients account will be analyzed to determine the source thereof, *i.e.*, funds *derived from* gratuitous benefits *deposited by the VA* under laws administered by the VA or from other sources. *For this purpose gratuitous benefits are defined as all benefit payments under laws administered by the VA except insurance payments (Servicemen's Indemnity benefits are not insurance payments).*"

Therefore, we propose in § 5.713(a) to make this section applicable to "all VA benefits except insurance payments."

Finally, we propose to not include current §§ 3.400(l) and 3.500(j) in part 5. These paragraphs are merely cross-references to award, reduction, or discontinuance effective-date provisions that are included in proposed § 5.713. Cross-references are not necessary.

5.714 Restriction on Delivery of VA Benefit Payments to Payees Located in Countries on Treasury Department List

Proposed § 5.714 addresses restrictions on payments to individuals located in countries listed by the Department of the Treasury. This regulation implements 31 U.S.C. 3329, "Withholding checks to be sent to foreign countries," and 31 U.S.C. 3330, "Payment of Department of Veterans Affairs checks for the benefit of individuals in foreign countries." The first statute, 31 U.S.C. 3329, requires that the Secretary of the Treasury prohibit sending a Federal payment to a foreign country when the Secretary decides that there is no reasonable assurance the intended recipient of the payment will receive it and be able to negotiate it for its full value. The second statute, 31 U.S.C. 3330, provides special rules for applying 31 U.S.C. 3329 to VA benefits. The specific countries subject to the prohibition are listed in 31 CFR 211.1, "Withholding delivery of checks." We propose to refer readers to 31 CFR 211.1, rather than list the affected countries, because the list is subject to change by the Department of the Treasury.

Proposed § 5.714(a) defines the following terms used in this section and elsewhere in part 5: "Payee," "special deposit account" (the special account referenced in 31 U.S.C. 3329), and "Treasury Department list" (the list of countries in 31 CFR 211.1). Although

these definitions are new, they reflect current VA practices contemplated by part 3 of title 38, CFR.

Current § 3.653(c) is limited to "aliens residing in" a country on the Treasury Department list; however, we note that 38 U.S.C. 3329 and 3330 are not limited to aliens and are based on delivery to a country, not residency in a country. Therefore, in proposed § 5.714(c), we apply the restriction on check delivery to a "payee located in a country on the Treasury Department list."

Further, section 3330(a) of title 31, United States Code, prohibits VA from sending checks "if the check is * * * to be sent to a person in the United States or a territory or possession of the United States, and the person is legally responsible for the care of an individual in a foreign country." Although broadly written, this provision is not intended to bar VA benefit payments to anyone in the U.S. who is legally responsible for any person located in a foreign country. Rather, its intended effect is only to bar payment to a person in the U.S. or its territories or possessions on behalf of a VA beneficiary located in a country on the Treasury Department list. We propose to make that clear in proposed § 5.714(c).

Section 3329 of title 31, United States Code, prohibits sending VA checks to countries on the Treasury Department list. Neither the statute, nor its implementing regulation, 31 CFR 211.1, precludes a payee located in such countries from taking delivery outside of that country. It is VA's practice to permit delivery of checks to a U.S. Foreign Service post in a country that is not on the Treasury Department list, if requested by a payee. We propose to include this provision in § 5.714(d). VA intends no substantive change, inasmuch as this method of delivery is mentioned in current § 3.653(c)(1) and (2).

5.715 Claims for Undelivered or Discontinued Benefits

Proposed § 5.715 explains how to claim benefits discontinued under proposed § 5.713. It also explains how to claim benefits that could not be delivered because of the restrictions in proposed § 5.714. Proposed § 5.715(a) cross-references the definitions of "payee," "special deposit account," and "Treasury Department list" in § 5.714(a).

Proposed § 5.715(b)(2) states that there is no time limit for filing claims under this section. This provision is based on current § 3.653(c)(3) with one change involving time limits for filing claims for discontinued or withheld benefits. The current regulation states

that there is no time limit with respect to claims for benefits withheld from a person located in a country on the Treasury Department list. There is also no time limit with respect to claims for benefit payments to an alien whose benefits were discontinued. We have included general language in proposed § 5.715(b)(2) in order to make clear that there is no time limit for claims filed for benefits discontinued under § 5.713 or withheld under § 5.714.

Proposed § 5.715 is based on 38 U.S.C. 5308(b). Section 5308(b) requires that a new claim by an alien whose benefits were discontinued under section 5308 be “accompanied by evidence satisfactory to the Secretary showing that such alien was not guilty of mutiny, treason, sabotage, or rendering assistance to the enemy.” Section 3329(c)(1) of title 31 in essence provides that before the Secretary of the Treasury can pay out VA benefit funds in the special deposit account, the person claiming payment must satisfy VA of his or her right to the withheld funds. We propose to address these concerns by providing in § 5.715(d) that VA may request any evidence necessary to support a claim under this section. This includes evidence that the payee has not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy and evidence of continued entitlement to benefits during the time that awarded benefits were discontinued or benefit payments were undelivered.

Section 5.677, cited in proposed § 5.715(c), was published as proposed on May 31, 2006. *See* 71 FR 31056, 31065–66. Section 5.90, cited in proposed § 5.715(d), will restate the content of current § 3.159. Space was reserved in part 5 in a prior Notice of Proposed Rulemaking. *See* 70 FR 24680, 24683 (May 10, 2005); *see also* 73 FR 23353 (April 30, 2008) (amending 38 CFR 3.159). Section 5.565, cited in proposed § 5.715(f), was published as proposed on October 1, 2004. *See* 69 FR 59072, 59088–89.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information, at 38 CFR 5.708 and 5.709, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections

of information are associated with this proposed rule. The information collection requirements for §§ 5.708 and 5.709 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0101.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans’ Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adaptive Housing for Disabled Veterans; 64.109, Veterans Compensation for Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: August 19, 2008.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR Part 5, as proposed to be added at 69 FR 4832, January 30, 2004, and as amended, by adding subpart L as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart L—Payments and Adjustments to Payments

General Rate-Setting and Payments

Sec.

- 5.690 Where to find benefit rates and income limits.
- 5.691 Adjustments for fractions of dollars.
- 5.692 Fractions of one cent not paid.
- 5.693 Beginning date for certain VA benefit payments.
- 5.694 Surviving spouse’s benefit for the month of the veteran’s death.

5.695 Payments to or for a child pursuing a course of instruction at an approved educational institution.

5.696 Awards of dependency and indemnity compensation when not all dependents apply.

5.697 Exchange rates for income received or expenses paid in foreign currencies.

5.698—5.704 [Reserved]

General Reductions, Discontinuances, and Resumptions

5.705 General effective dates for reduction or discontinuance of benefits.

5.706 Payments excluded in calculating income or net worth.

5.707 Deductible medical expenses.

5.708 Eligibility verification reports.

5.709 Claimant and beneficiary responsibility to report changes.

5.710 Adjustment in benefits due to reduction or discontinuance of a benefit to another payee.

5.711 Payment to dependents due to the disappearance of a veteran for 90 days or more.

5.712 Suspension of VA benefits due to the disappearance of a payee.

5.713 Restriction on VA benefit payments to an alien located in enemy territory.

5.714 Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list.

5.715 Claims for undelivered or discontinued benefits.

5.716—5.739 [Reserved]

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

Subpart L—Payments and Adjustments to Payments

General Rate-Setting and Payments

§ 5.690 Where to find benefit rates and income limits.

The rates of disability compensation, dependency and indemnity compensation, Old-Law Pension, Section 306 Pension, Improved Pension, and monthly allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects, as well as the income limits applicable to Old-Law Pension, Section 306 Pension, Improved Pension, and parents' dependency and indemnity compensation, are available on VA's public Web site at <http://www.va.gov>.

(Authority: 38 U.S.C. 501(a))

§ 5.691 Adjustments for fractions of dollars.

(a) *Calculation of adjusted annual income.* For purposes of entitlement to pension, VA will round down to the nearest dollar when calculating the adjusted annual income. See § 5.370 for the definition of adjusted annual income. For purposes of entitlement to parents' dependency and indemnity compensation (DIC), VA will round down to the nearest dollar when

calculating the annual income. See §§ 5.531 through 5.534 for how to calculate parents' DIC annual income. (Authority: 38 U.S.C. 1503(b))

(b) *Calculation of increased rates and income limits.* VA will round up to the nearest dollar when calculating the increase due to a cost-of-living adjustment of any of the following amounts:

- (1) Improved Pension maximum annual pension rates;
- (2) Old-Law Pension and Section 306 Pension annual income limits;
- (3) Income of a spouse when excluded from a veteran's countable annual income for Old-Law Pension and Section 306 Pension purposes;
- (4) Parents' DIC annual rates and income limits; or
- (5) The monthly allowance rates under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects.

(Authority: 38 U.S.C. 5312(c))

(c) *Calculation of monthly or other pension rates.* VA will round down to the nearest dollar the amount of Improved Pension or Section 306 Pension payable.

(Authority: 38 U.S.C. 5123)

§ 5.692 Fractions of one cent not paid.

VA will not pay fractions of a cent when paying any benefit.

(Authority: 38 U.S.C. 501(a), 5312(c)(2))

§ 5.693 Beginning date for certain VA benefit payments.

(a) *Definition.* For purposes of this section, "increased award" means a benefit payment increased as a result of:

- (1) An added dependent;
- (2) An increase in disability or disability rating, including but not limited to a temporary increased rating;
- (3) A reduction in income;
- (4) An election of Improved Pension under § 5.461;

(5) Except as provided in paragraph (c)(6) of this section, a temporary total rating under § 4.29 of this chapter, "Ratings for service-connected disabilities requiring hospital treatment or observation"; or

(6) A temporary total rating under § 4.30 of this chapter, "Convalescent ratings."

(b) *Beginning payment date rule.* Except as provided in paragraph (c) of this section, benefits identified in this paragraph will not be paid for any period before the first day of the month after the month in which the payment becomes effective. However, VA will consider beneficiaries to be in receipt of monetary benefits as of the effective

date of the award. This paragraph applies to awards or increased awards of the following benefits made based on an original claim, reopened claim, or claim for increase:

- (1) Disability compensation;
- (2) Pension;
- (3) Dependency and indemnity compensation (DIC); or
- (4) The monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects.

(c) *Exceptions to beginning payment date rule.* The beginning payment date in paragraph (b) of this section does not apply to the following awards, which are payable as of the effective date:

- (1) Awards that provide only for continuity of entitlement with no increase in the rate of payment.
- (2) Awards restoring a previously reduced benefit because the circumstances requiring reduction no longer exist.
- (3) Awards to a surviving spouse at the veteran's rate for the month of the veteran's death.
- (4) Awards that change any withholding, reduction, or suspension by reason of:

- (i) Recoupment;
- (ii) An offset to collect indebtedness;
- (iii) Hospitalization (Institutionalization);
- (iv) Incompetency;
- (v) Incarceration; or
- (vi) Discontinuance of apportionment.

(5) Benefit increases resulting solely from the enactment of certain types of legislation, including:

- (i) Cost-of-living increases for disability compensation and DIC for surviving spouses and children;
- (ii) Increases in the maximum annual pension rate for Improved Pension;
- (iii) Increases in the income limits and maximum monthly rate for parents' DIC;
- (iv) Increases in the monetary allowances under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects; and
- (v) Statutory changes in the criteria for the award of special monthly compensation.

(6) Awards based on temporary total ratings under § 4.29 of this chapter when the entire period of hospitalization or treatment, including any period of post-hospitalization convalescence, begins and ends within the same calendar month. In such cases the period of payment will begin on the first day of the month in which the hospitalization or treatment began.

(7) Apportionments of benefits.

(8) Certain awards of disability compensation to a veteran who is also

eligible for retired pay, as described in paragraph (d)(1) of this section.

(9) Awards to a veteran's dependent of benefits that the veteran was receiving or entitled to receive when the veteran disappeared for 90 days or more.

(d) *Cases involving waiver of retired pay.* (1) If the veteran's retired pay, as defined in § 5.745(a), is greater than the amount of VA disability compensation payable, VA will pay disability compensation from the effective date the veteran waives such retired pay.

(2) If the amount of VA disability compensation payable is greater than the veteran's retired pay, VA's payment of the difference for any period before the effective date of the veteran's waiver of such retired pay is subject to the beginning payment date rule described in paragraph (b) of this section.

(3) Nothing in this section prevents the veteran from receiving retired pay before the effective date of waiver of such pay.

(Authority: 38 U.S.C. 501(a), 1832, 5305, 5111)

§ 5.694 Surviving spouse's benefit for the month of the veteran's death.

(a) *Month-of-death benefit.* For purposes of this section, "month-of-death benefit" means a payment to a deceased veteran's surviving spouse for the month in which the veteran died and in the amount of disability compensation or pension that the veteran would have received for that month, if not for his or her death.

(b) *Surviving spouse entitled to death pension or dependency and indemnity compensation (DIC) for the month of death.* (1) If the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount greater than the amount of disability compensation or pension that the veteran would have received for that month but for his or her death, then the surviving spouse is not entitled to a month-of-death benefit.

(2) If the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount equal to or less than the amount of disability compensation or pension that the veteran would have received for that month but for his or her death, then the surviving spouse is entitled to death pension or DIC for the month of the veteran's death in an amount equal to the amount of disability compensation or pension that veteran would have received for that month but for his or her death.

(c) *Surviving spouse not entitled to death pension or DIC for the month of death.* If the veteran died after

December 31, 1996, and the surviving spouse is not entitled to death pension or DIC for the month of the veteran's death, then the surviving spouse is entitled to the month-of-death benefit. If the veteran died before December 31, 1996, then such a surviving spouse is not entitled to the month-of-death benefit.

(d) *Payment issued to deceased veteran.* If VA issues payment to a deceased veteran for the month-of-death benefit, the payment will be treated as payable to a surviving spouse who is otherwise eligible for payment under paragraph (c) of this section. If the payment issued to a deceased veteran is negotiated or deposited by the surviving spouse, the payment will be considered the benefit to which the surviving spouse is entitled under paragraph (c) of this section. However, if such payment is less than the amount the surviving spouse would receive under paragraph (c) of this section, the unpaid difference may be paid as accrued benefits. See § 5.550 (defining accrued benefits).

(Authority: 38 U.S.C. 5111(c), 5310)

§ 5.695 Payments to or for a child pursuing a course of instruction at an approved educational institution.

(a) *Definition.* An "approved educational institution" means a permanent organization, approved by VA, that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term "home schools" is limited to courses of instruction for grades kindergarten through 12.

(Authority: 38 U.S.C. 104(a))

(b) *Payment of Improved Pension or disability compensation.* Additional disability compensation will be paid to a veteran, or a higher rate of Improved Pension may be paid to a veteran or a surviving spouse, for a child of the veteran at least 18 years but less than 23 years old who is pursuing a course of instruction at an approved educational institution. If no surviving spouse is eligible to Improved Death Pension or such child of the veteran is not in the surviving spouse's custody, Improved Death Pension may be paid directly to such child. For the definition of custody see paragraph (a) of § 5.417 "Child custody for purposes of determining dependency for Improved Pension." An

award under this section will be effective on or after the child's 18th birthday.

(1) *Child began pursuing a course of instruction at an approved educational institution before reaching age 18.* If a child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and VA receives a claim on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date will be the child's 18th birthday.

(2) *Child began pursuing a course of instruction at an approved educational institution after reaching age 18.* If a child began pursuing a course of instruction at an approved educational institution after reaching age 18 and a claim is received no later than 1 year after the date the child began pursuing a course of instruction at an approved educational institution, the effective date will be the date the child began pursuing a course of instruction at an approved educational institution.

(c) *Payment of dependency and indemnity compensation (DIC) to a child not receiving DIC before reaching age 18.* If a child was not receiving DIC before reaching age 18, DIC will be paid directly to the child for periods beginning on or after the child's 18th birthday if the child is entitled to DIC and is pursuing a course of instruction at an approved educational institution. The effective date of the award of benefits will be as follows:

(1) *Child was pursuing a course of instruction at an approved educational institution upon reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and a claim for DIC is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date will be the first day of the month in which the child turned 18.

(2) *Child began pursuing a course of instruction after reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution after reaching age 18 and a claim for DIC is received no later than 1 year after the date the child began pursuing a course of instruction at an approved educational institution, the effective date will be the first day of the month the child began pursuing a course of instruction at an approved educational institution.

(3) *Child established as a surviving spouse's dependent.* If immediately before a child's 18th birthday, the child was established as a dependent of a surviving spouse entitled to DIC, and

the child's claim for DIC is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, the effective date of the DIC to the child will be the child's 18th birthday.

(Authority: 38 U.S.C. 5110(e))

Cross Reference: For information on the impact on awards to other children, see § 5.573, "Effective date for dependency and indemnity compensation rate adjustments when an additional survivor files an application."

(d) *Payment of DIC to a child receiving DIC before reaching age 18.* If a child was receiving DIC in his or her own right before reaching age 18, payments may be made for periods beginning on or after the child's 18th birthday if the child is pursuing a course of instruction at an approved educational institution. Benefits will be payable directly to the child as follows:

(1) *Child began pursuing a course of instruction before reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution on or before the child's 18th birthday and evidence of school attendance is received on or before the child's 18th birthday or no later than 1 year after the child's 18th birthday, payments will be made from the child's 18th birthday.

(2) *Child began pursuing a course of instruction after reaching age 18.* If the child began pursuing a course of instruction at an approved educational institution after reaching age 18 and evidence of school attendance at an approved educational institution is received no later than 1 year after the date the child began pursuing a course of instruction, payments will be made from the date the child began pursuing a course of instruction.

(Authority: 38 U.S.C. 5110(e))

Cross Reference: For the rate of payment, see § 5.524, "Awards of dependency and indemnity compensation benefits to children when there is a retroactive award to a school child."

(e) *Claims filed outside the one-year period.* If VA receives a claim referred to in paragraphs (b) or (c), or evidence referred to in paragraph (d), of this section after the expiration of the 1-year period, the effective date will be the date VA receives the claim or evidence.

(f) *Payments for vacation or holiday periods.* (1) *Child returns to an approved educational institution.* A child is considered to be pursuing a course of instruction at an approved

educational institution during a vacation or holiday period if the child:

(i) Was pursuing a course of instruction at an approved educational institution immediately before the vacation or holiday period; and
(ii) Resumes the course of instruction at the beginning of the next term either at the same or a different approved educational institution.

(2) *Child fails to return to an approved educational institution.* When payment has been made for a vacation or holiday period, and the child does not resume the course of instruction, benefits will be discontinued effective the first day of the month after the month for which VA last paid benefits, or the first day of the month that the child was scheduled to resume the course of instruction, whichever date is earlier.

(Authority: 38 U.S.C. 5112(b)(7))

(g) *Ending dates.* (1) *Course of instruction completed.* Except as provided in paragraph (f)(2) of this section, benefits will be paid under this section through the last day of the month in which a course of instruction was or will be completed.

(2) *Termination of course of instruction before completion.* Benefits will be paid under this section through the last day of the month in which the course of instruction was terminated.

(h) *Transfer to another course of instruction or another educational institution.* Payments previously made under this section will not be adjusted because the child changed a course of instruction or transferred to a different approved educational institution.

(i) *Bars to benefit payments under this section.* Benefits under this section will not be paid if:

(1) The child has elected to receive educational assistance under 38 U.S.C. chapter 35 (see §§ 5.764 and 21.3023 of this chapter); or

(2) The child is pursuing a course of instruction at an approved educational institution where the child is completely supported at the expense of the Federal Government, such as a military service academy.

(Authority: 38 U.S.C. 501(a))

§ 5.696 Awards of dependency and indemnity compensation when not all dependents apply.

Except as provided in § 5.536(d), "One parent—marriage ends or parent is separated from spouse," in any case where a dependency and indemnity compensation (DIC) claim has been filed by or on behalf of at least one dependent but VA believes that other dependents may be entitled to DIC based on the

death of the same veteran, the award (original or amended) to all dependents who have filed claims will be made for all periods at the rates and in the same manner as though there were no dependents other than the dependents who filed claims. However, if the file reflects that there are additional potential DIC claimants and less than 1 year has passed since the veteran's death, the award to a dependent who has filed a claim will be made at the rate which would be payable as if all dependents were receiving benefits. If, at the expiration of the 1-year period, claims have not been filed for such dependents, VA will pay the full rate to the dependents already receiving DIC. This payment will include any retroactive amounts to which they are entitled.

(Authority: 38 U.S.C. 501(a))

§ 5.697 Exchange rates for income received or expenses paid in foreign currencies.

(a) *Pension and parents' dependency and indemnity compensation (DIC) rates.* In determining the rate of pension or parents' DIC payable to an individual, VA will convert the amount of income received or expenses paid in foreign currencies into U.S. dollars using the quarterly exchange rates established by the U.S. Department of the Treasury as provided in this section. Benefits will be paid in U.S. dollars.

(1) *Calculation of pension or parents' DIC rates.* Because exchange rates for foreign currencies cannot be determined in advance, VA will estimate pension or parents' DIC rates using the most recent quarterly exchange rate. When the beneficiary or claimant informs VA of a change in income or expenses that would affect entitlement, VA will make retroactive benefit adjustments based on the exchange rate in effect at the time VA received notice of the change in income or expenses.

(2) *Retroactive adjustments due to changes in exchange rates.* (i) For retroactive adjustments to pension or parents' DIC rates due to changes in the currency exchange rate, VA will use the average of the four most recent quarterly exchange rates.

(ii) If income or expenses are reported for a prior reporting period, VA will calculate any retroactive benefit rate adjustment using the average of the four most recent quarterly exchange rates which were available on the last day of the reporting period for which the income is being reported. See § 5.708(a)(2) (definition of "reporting period").

(b) *Burial benefits—(1) General rule.* VA will calculate monetary burial

benefits (as defined in [regulation that will be published in a future Notice of Proposed Rulemaking]) payable as reimbursement for burial expenses paid in foreign currency using the quarterly exchange rate for the quarter in which expenses were paid. If the U.S. Department of the Treasury has not yet published a rate for that quarter, the payment amount will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(2) *Exception.* If burial benefits are payable to an unpaid creditor, VA will calculate the payment amount using the quarterly exchange rate for the quarter in which the veteran died. When entitlement originates during a quarter for which the U.S. Department of the Treasury has not yet published a quarterly rate, amounts due will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(c) *Accrued benefits—(1) General rule.* Accrued benefits, as defined in § 5.550, may be paid in accordance with

§ 5.555 as reimbursement to the person who bore the expense of the deceased beneficiary's last illness and/or burial. VA will calculate such accrued benefits based on expenses paid in foreign currency using the quarterly exchange rate for the quarter in which the expenses were paid. If the U.S. Department of the Treasury has not yet published a rate for that quarter, the payment amount will be calculated using the most recent quarterly exchange rate. Payments will be made in U.S. dollars.

(2) *Exception.* If accrued benefits are payable to an unpaid creditor, VA will calculate the payment amount using the quarterly exchange rate for the quarter in which the beneficiary died. When entitlement originates during a quarter for which the U.S. Department of the Treasury has not yet published a quarterly rate, amounts due will be calculated using the most recent quarterly rate. Payments will be made in U.S. dollars.

(Authority: 38 U.S.C. 501(a))

§§ 5.698–5.704 Reserved

General Reductions, Discontinuances, and Resumptions

§ 5.705 General effective dates for reduction or discontinuance of benefits.

(a) General rule. Except as otherwise provided, VA will assign an effective date for the reduction or discontinuance of disability compensation, pension, dependency and indemnity compensation (DIC), or the monetary allowances under chapter 18 of title 38, United States Code, in accordance with the facts found. If more than one effective-date provision applies to a particular issue or event, VA will reduce or discontinue the benefit(s) in accordance with the earliest applicable date. VA will pay a reduced rate or discontinue benefits effective the date of reduction or discontinuance.

(b) The following table lists the locations of specific reduction and discontinuance effective-date provisions in part 5. The table is provided solely for informational purposes, and does not contain any substantive rules.

Effective-date provision	Part 5 location
Subpart C—Adjudicative Process, General	
Filing a claim for death benefits	§ 5.53(c)
Requirement to provide Social Security numbers	§ 5.101(c)
Failure to report for VA examination or reexamination	§ 5.103(d)
Certifying continuing eligibility to receive benefits	§ 5.104(c)
Effective dates based on change of law or VA issue	§ 5.152(b)
Effective dates for reduction or discontinuance of awards based on erroneous payments	§ 5.165
Effective dates for severing service connection or discontinuing or reducing benefit payments	§ 5.177

Subpart D—Dependents and Survivors

Evidence of dependency—reduction or discontinuance of VA benefits	§ 5.181(c)
Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent	§ 5.184
Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to marriage or remarriage	§ 5.197
Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to divorce or annulment	§ 5.198
Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person	§ 5.204
Effective date of reduction or discontinuance—child reaches age 18 or 23	§ 5.231
Effective date of reduction or discontinuance—terminated adoptions	§ 5.232
Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household	§ 5.233
Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support	§ 5.234

Subpart E—Claims for Service Connection and Disability Compensation

Effective dates—reduction or severance of service-connected disability compensation	§ 5.313
Effective dates—discontinuance of total disability rating based on individual unemployability	§ 5.314
Effective dates—reduction or discontinuance of additional disability compensation based on parental dependency	§ 5.315
Effective dates—Additional compensation for regular aid and attendance payable for a veteran's spouse	§ 5.334(b)

Subpart F—Nonservice-Connected Disability Pensions and Death Pensions

Effective dates for awards, reductions, and discontinuances of special monthly pension	§ 5.393
Improved Pension income adjustments—effective dates, categories, and counting	§ 5.421(a), (c)
Improved Pension time limits to establish entitlement or to increase rate based on income	§ 5.423
Effective date of discontinuance of Improved Death Pension payments to a beneficiary no longer recognized as the veteran's surviving spouse	§ 5.433
Award, or discontinuance of award, of Improved Death Pension to a surviving spouse where Improved Death Pension payments to a child are involved	§ 5.434(b), (c)

Effective-date provision	Part 5 location
Effective dates for Old-Law Pension and Section 306 Pension reductions or discontinuances	§ 5.477
Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary	
Awards of dependency and indemnity compensation benefits to children when there is a retroactive award to a school child	§ 5.524(c)
Effective dates for discontinuance of DIC or death compensation payments to a person no longer recognized as the veteran's surviving spouse	§ 5.568
Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved	§ 5.569
Effective date for reduction in DIC—surviving spouses	§ 5.570
Effective date for reduction or discontinuance based on increased income—parents' DIC	§ 5.572
Effective date for dependency and indemnity compensation rate adjustments when an additional dependent files an application	§ 5.573
Effective dates of awards and discontinuances of special monthly dependency and indemnity compensation	§ 5.574(b)

Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors

Awards of VA benefits based on special acts or private laws	§ 5.581(d), (e)
Effective dates of awards for certain disabled children of Vietnam veterans	§ 5.591

Subpart I—Benefits for Certain Filipino Veterans and Survivors

Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate	§ 5.618
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Subpart K—Matters Affecting the Receipt of Benefits

Effective dates—forfeiture	§ 5.681
Presidential pardon for offenses causing forfeiture	§ 5.682(d)
Renouncement of benefits	§ 5.683(c)

Subpart L—Payments and Adjustments to Payments

Beginning date for certain VA benefit payments	§ 5.693(b)
Benefits paid to or for a child pursuing a course of instruction at an approved educational institution	§ 5.695(b)–(g)
Eligibility verification reports	§ 5.708(f), (g)
Adjustment in benefits due to reduction or discontinuance of a benefit to another payee	§ 5.710(b)
Payment to dependents due to the disappearance of a veteran for 90 days or more	§ 5.711(b), (c), (d)
Suspension of VA benefits due to the disappearance of a payee	§ 5.712
Restriction on VA benefit payments to an alien located in enemy territory	§ 5.713(b)
Reduction of special monthly compensation based on the need for regular aid and attendance while a veteran is receiving hospital care	§ 5.720(b), (e), (f)
Resumption of special monthly compensation based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.721(c), (b)
Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care	§ 5.722(a), (d), (e), (f)
Reduction of Improved Pension while a veteran or surviving spouse is receiving Medicaid-covered care in a nursing facility	§ 5.723(b), (c)
Reduction of special monthly pension based on the need for regular aid and attendance for Improved Pension while a veteran is receiving hospital care	§ 5.724(b), (d), (e)
Resumption of Improved Pension and special monthly pension based on the need for regular aid and attendance after discharge or release from hospital care	§ 5.725(c), (d)
Reduction of Section 306 Pension while a veteran is receiving hospital care	§ 5.726(a), (d)
Reduction of Old-Law Pension while a veteran is receiving hospital care	§ 5.727(a), (c)
Reduction of special monthly pension based on the need for regular aid and attendance for Old-Law Pension or Section 306 Pension while a veteran is receiving hospital care	§ 5.728(b), (e)
Resumption of Section 306 Pension and special monthly pension based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.729(c), (e)
Resumption of Old-Law Pension and special monthly pension based on the need for regular aid and attendance when a veteran is discharged or released from hospital care	§ 5.730(c), (d), (e)
General effective dates for awarding, reducing, or discontinuing VA benefits because of an election	§ 5.743(b)
Prohibition against receipt of active military service pay and VA benefits for the same period	§ 5.746(c)
Effect of election of compensation under the Radiation Exposure Compensation Act of 1990 on payment of certain VA benefits	§ 5.754(d)
Payment of multiple VA benefits to a surviving child based on the service of more than one veteran	§ 5.762(c)(6)(ii)
Payment of dependents' educational assistance (DEA) and VA pension or dependency and indemnity compensation (DIC) for the same period	§ 5.764(a)

Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries

Effective date of apportionment discontinuance or reduction	§ 5.784
Determinations of incompetency	§ 5.791(d)
Incarcerated beneficiaries—general provisions and definitions	§ 5.810(c)

Effective-date provision	Part 5 location
Discontinuance of pension during incarceration	§ 5.813(b)

(Authority: 38 U.S.C. 501(a), 1832, 5112)

Cross Reference: Additional time period before certain reductions or discontinuances take effect. See § 5.177.

§ 5.706 Payments excluded in calculating income or net worth.

(a) *Scope.* This section describes payments excluded by Federal statutes from income and net worth

determinations for VA benefits that are provided based on financial need. These benefits are Improved Pension, Section 306 Pension, Old-Law Pension, parents' dependency and indemnity compensation (DIC), and additional amounts of veterans' compensation payable for dependent parents. Income and net worth rules applying solely to a specific benefit are included in the

regulations that deal with that specific benefit.

(b) *Specific payments excluded.* The following table states whether certain payments are included or excluded as income or net worth for any VA-administered benefit program that is based on financial need. This table does not confer any substantive rights.

Program or payment	Income	Net worth	Authority
Compensation or Restitution Payments			
(1) <i>Relocation payments.</i> Payments to persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Excluded ..	Included ...	42 U.S.C. 4636.
(2) <i>Crime victim compensation.</i> Amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.	Excluded ..	Excluded ..	42 U.S.C. 10602(c).
(3) <i>Restitution to individuals of Japanese ancestry.</i> Payments made as restitution under Pub. L. 100-383 to an individual of Japanese ancestry who was interned, evacuated, or relocated during the period of December 7, 1941 through June 30, 1946, pursuant to any law, Executive Order, Presidential proclamation, directive, or other official action respecting these individuals.	Excluded ..	Excluded ..	50 U.S.C. App. 1989b-4(f).
(4) <i>Victims of Nazi persecution.</i> Payments made to individuals because of their status as victims of Nazi persecution.	Excluded ..	Excluded ..	Sec. 1(a), Pub. L. 103-286, 108 Stat. 1450, 42 U.S.C. 1437a note.
(5) <i>Agent Orange settlement payments.</i> Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).	Excluded ..	Excluded ..	Sec. 1, Pub. L. 101-201, 103 Stat. 1795.
(6) <i>Chapter 18 benefits.</i> Allowances paid under 38 U.S.C. chapter 18 to a veteran's child with a birth defect.	Excluded ..	Excluded ..	38 U.S.C. 1833(c).

Payments to Native Americans			
(7) <i>Indian judgment fund distributions.</i> Funds listed in 25 U.S.C. 1407	Excluded ..	Excluded ..	25 U.S.C. 1407.
(8) <i>Interests of individual Indians in trust or restricted lands.</i> Interests of individual Indians in trust or restricted lands and up to \$2,000 per year of income received by individual Indians that is derived from such interests.	Excluded ..	Excluded ..	25 U.S.C. 1408.
(9) <i>Submarginal land.</i> Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.	Excluded ..	Excluded ..	25 U.S.C. 459e.
(10) <i>Old Age Assistance Claims Settlement Act.</i> Up to \$2,000 of per capita distributions under the Old Age Assistance Claims Settlement Act.	Excluded ..	Excluded ..	25 U.S.C. 2307.
(11) <i>Alaska Native Claims Settlement Act.</i> Any of the following, if received from a Native Corporation, under the Alaska Native Claims Settlement Act:	Excluded ..	Excluded ..	43 U.S.C. 1626(c).
(i) Cash, including cash dividends on stocks and bonds, up to a maximum of \$2,000 per year;			
(ii) Stock, including stock issued as a dividend or distribution;			
(iii) Bonds that are subject to the protection under 43 U.S.C. 1606(h) until voluntarily and expressly sold or pledged by the shareholder after the date of distribution;			
(iv) A partnership interest;			
(v) Land or an interest in land, including land received as a dividend or distribution on stock;			
(vi) An interest in a settlement trust.			
(12) <i>Maine Indian Claims Settlement Act.</i> Payments received under the Maine Indian Claims Settlement Act of 1980.	Excluded ..	Excluded ..	25 U.S.C. 1728.

Work-Related Payments			
(13) <i>Workforce investment.</i> Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. chapter 30).	Excluded ..	Included ...	29 U.S.C. 2931(a)(2).
(14) <i>AmeriCorps participants.</i> Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990.	Excluded ..	Included ...	42 U.S.C. 12637(d).

Program or payment	Income	Net worth	Authority
(15) <i>Volunteer work.</i> Compensation or reimbursement to volunteers involved in programs administered by the Corporation for National and Community Service, unless the payments are equal to or greater than the minimum wage. The minimum wage is either under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or under the law of the State where the volunteers are serving, whichever is greater.	Excluded ..	Excluded ..	42 U.S.C. 5044(f).
Miscellaneous Payments			
(16) <i>Food stamps.</i> Value of the allotment provided to an eligible household under the Food Stamp Program.	Excluded ..	Excluded ..	7 U.S.C. 2017(b).
(17) <i>Food for children.</i> Value of free or reduced price for food under the Child Nutrition Act of 1966.	Excluded ..	Excluded ..	42 U.S.C. 1780(b).
(18) <i>Child care.</i> Value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990.	Excluded ..	Excluded ..	42 U.S.C. 9858q.
(19) <i>Services for housing recipients.</i> Value of services, but not wages, provided to a resident of an eligible housing project under a congregate services program under the Cranston-Gonzalez National Affordable Housing Act.	Excluded ..	Excluded ..	42 U.S.C. 8011(j)(2).
(20) <i>Home energy assistance.</i> The amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under the Low-Income Home Energy Assistance Act.	Excluded ..	Excluded ..	42 U.S.C. 8624(f).
(21) <i>Programs for older Americans.</i> Payments, other than wages or salaries, received from programs funded under the Older Americans Act of 1965 (42 U.S.C. chapter 35).	Excluded ..	Included ...	42 U.S.C. 3020a(b).
(22) <i>Student financial aid.</i> Amounts of student financial assistance received under Title IV of the Higher Education Act of 1965, including Federal work-study programs or under Bureau of Indian Affairs student assistance programs, or vocational training under the Carl D. Perkins Vocational and Technical Education Act of 1998.	Excluded ..	Excluded ..	20 U.S.C. 1087uu, 2415(a).
(23) <i>Retired Serviceman's Family Protection Plan annuities.</i> Annuities received under subchapter 1 of the Retired Serviceman's Family Protection Plan.	Excluded ..	Included ...	10 U.S.C. 1441.
(24) <i>Medicare Prescription Drug Discount Card and Transitional Assistance Program</i>	Excluded ..	Excluded ..	42 U.S.C. 1395w-141(g)(6).

(Authority: 38 U.S.C. 501(a))

§ 5.707 Deductible medical expenses.

(a) *Scope.* This section describes the medical expenses that VA will deduct for purposes of three of VA's benefit programs based on financial need: Improved Pension, Section 306 Pension, and parents' dependency and indemnity compensation (DIC). For the rules governing how such medical expenses are deducted, see 5.413 Income deductions for calculating adjusted annual income (regarding Improved Pension), 5.474 Deductible Expenses for Section 306 Pension Only, and 5.532 Deductions from income (regarding parents' DIC).

(b) *Definition of licensed healthcare provider.* For purposes of this section, the term "licensed healthcare provider" means an individual licensed to provide health services in the state in which the individual provides health services. The term includes, but is not limited to, physician, registered nurse, licensed vocational nurse, or licensed practical nurse.

(c) *Medical Expenses—general.* The following payments are "medical expenses" that will be deducted from income if they are not reimbursed:

(1) *Care by a licensed healthcare provider.* Payments made for diagnosis, treatment, rehabilitation, or preventive maintenance (such as an annual physical examination).

(2) Medical supplies and medications.

Payments made for prescribed medication and legal non-prescription medication. This category also includes medically necessary food, beverages, and vitamins that a licensed healthcare provider authorized to write prescriptions directs an individual to take.

(3) *Adaptive equipment.* Payments made for adaptive devices or companion animals used to assist an individual with an ongoing disability, to the extent that a non-disabled person would not normally make such payments.

(4) *Transportation expenses.* Payments made for transportation for medical purposes (including transportation to and from a licensed healthcare provider's office). When an individual uses a private vehicle, the deductible expense for traveling will be limited to 20 cents per mile traveled, but the full cost of parking, taxi, bus, or other transportation costs will be deducted.

(5) *Health insurance premiums.* Payments made for health, medical, and hospitalization insurance premiums. This category includes Medicare premiums.

(6) *Institutional forms of care and in-home attendants.* The following payments are "medical expenses" that will be deducted from income:

(i) *Nursing home care.* Payments made to a facility that provides extended term inpatient medical care and made for such care, if a responsible official of the facility certifies that the individual is a patient (as opposed to a resident) in the facility.

(ii) *In-home attendant.* Payments made for an in-home attendant for personal care and maintenance of the immediate environment of an individual who is in need of regular aid and attendance or is housebound, if the attendant is providing some medical or nursing services. The attendant need not be a licensed healthcare provider. The attendant may be a family member.

(iii) *Veterans in State homes.* Payments made to a "State home," such as a veterans' or soldiers' and sailors' home (or the equivalent) operated by a State, for the domiciliary care or nursing and hospital care of a veteran who is a patient (as opposed to a resident) in the State home.

(iv) *Custodial Care.* Payments made to an institution that houses and maintains an individual because the individual needs to live in a protected environment, to the extent the payments are made for medical treatment but not to the extent they are made for strictly custodial care.

(v) *Government Institution.* Payments to a government institution for a physician-supervised program of

therapy or rehabilitation for an individual at that institution.

(vi) *Adult Day Care, Rest Homes, Group Homes.* Payments to an adult day care facility, rest home, or group home in which an individual is maintained rather than in a nursing home, subject to paragraphs (c)(6)(vi)(A) through (C) of this section:

(A) If the individual is in need of regular aid and attendance or is housebound, all reasonable fees paid to the facility are deducted from countable annual income if the facility provides some medical or nursing services to the individual. The services need not be provided by a licensed healthcare provider.

(B) If the individual is not in need of regular aid and attendance and is not housebound, VA will deduct all reasonable fees paid to the facility, but only to the extent that they are for medical treatment provided by a licensed healthcare provider.

(C) If the institution is a government facility, paragraph (c)(6)(v) of this section applies.

(Authority: 38 U.S.C. 501(a), 1503(a)(8), 1315(f)(3))

§ 5.708 Eligibility verification reports.

(a) *Definitions.* (1) An “eligibility verification report” (EVR) is a form that VA may use to obtain from claimants and beneficiaries information about factors that affect entitlement to Improved Pension and parents’ dependency and indemnity compensation (DIC). See § 5.709(b) for a list of some of the factors that affect entitlement to these benefits.

(2) A “reporting period” is a time period established by VA for which a claimant or beneficiary reports income, adjustments to income, and net worth to VA.

(b) *Circumstances when VA may require completion of an eligibility verification report (EVR).* Except as provided in paragraph (c) of this section, claimants or beneficiaries of pension or parents’ DIC must, as a condition of receipt or continued receipt of benefits, file a completed EVR upon request in the following circumstances:

(1) *EVRs for claimants.* VA may require a claimant to file a completed EVR annually, or when necessary to update, complete, or clarify information regarding the claimant’s income or marital status or any other factor that affects entitlement.

(2) *EVRs for beneficiaries.* VA may require a beneficiary to file a completed EVR annually or if:

(i) The Social Security Administration has not verified the social security

number of the beneficiary or, if applicable, the beneficiary’s spouse;

(ii) Evidence suggests that the beneficiary or, if applicable, the beneficiary’s spouse or child, may have received income from sources other than the Social Security Administration during the current or previous calendar year; or

(iii) The Secretary decides completion of an EVR is necessary to ensure accurate and timely reporting of changes in the factors that affect entitlement or to protect the Improved Pension and parents’ DIC programs from fraud.

(c) *Eligibility verification reports for certain parents receiving parents’ DIC.* A parent receiving parents’ DIC is not required to file an EVR if:

- (1) The parent has reached age 72; and
- (2) The parent has been receiving parents’ DIC during 2 consecutive calendar years.

However, a parent receiving parents’ DIC must notify VA whenever there is a material change in his or her annual income.

(Authority 38 U.S.C. 1315(e))

(d) *Action VA takes upon receipt of information or an eligibility verification report (EVR).* When determining whether an individual is entitled to benefits, VA will consider any new information provided in an EVR or through other means. VA may award, deny, increase, reduce, or discontinue benefits based on the information provided. When the expected annual income is uncertain, payment of pension or parents’ DIC will be authorized at the lowest rate or discontinued, as provided in § 5.423, § 5.478(a), or § 5.531(e).

(e) *Action VA takes when a claimant does not return an eligibility verification report (EVR).* If VA does not receive a completed EVR within 60 days after the date VA requested the EVR from a claimant, VA will deny the claim.

(f) *Action VA takes when a beneficiary does not return a completed eligibility verification report (EVR)—(1) Failure to return an EVR.* If VA does not receive an EVR within 60 days after the date VA requested the EVR from a beneficiary, VA will immediately suspend further benefit payments.

(2) *Return of an incomplete EVR.* If VA receives an incomplete EVR no later than 60 days after the date VA requested the EVR from a beneficiary, VA will notify the beneficiary that the EVR is incomplete and inform the beneficiary of the additional information needed to complete the EVR. If VA does not receive a completed EVR within 120 days after the date VA first requested the EVR from the beneficiary, VA will

immediately suspend further benefit payments.

(3) *Discontinuance for failure to return a completed EVR.* A beneficiary whose benefits were suspended under paragraphs (f)(1) or (2) of this section must return the completed EVR no later than 1 year after the date VA first requested the EVR from the beneficiary. Otherwise, VA will discontinue benefits as follows:

(i) If the reporting period is the initial reporting period, the effective date of discontinuance is the first day of that period; or

(ii) If the reporting period is a subsequent reporting period, the effective date of discontinuance is the first day of the calendar year for which the beneficiary was asked to provide information in the EVR.

(g) *Action VA takes when a beneficiary returns an eligibility verification report (EVR) after benefits were suspended or discontinued.* If benefits were suspended or discontinued under paragraph (f) of this section, VA will resume payments (if otherwise in order) as follows:

(1) If VA receives the completed EVR no later than 1 year after the end of the reporting period for which the beneficiary was asked to provide the EVR, VA will resume payment of benefits as follows:

(i) *Payments suspended but not discontinued.* If payments are suspended but not discontinued, such payments will be resumed effective the date of suspension.

(ii) *Payments discontinued effective before the date of suspension.* If payments are discontinued effective before the date of suspension, such payments will be resumed effective the date of discontinuance.

(2) If VA receives the completed EVR more than 1 year after the end of the reporting period, VA will treat the EVR as a new claim.

(h) *VA will accept the eligibility verification report (EVR) at any time to reduce a debt.* A former beneficiary who owes or owed money to VA because VA discontinued payments for failure to file an EVR within the time limit in paragraph (f) of this section may submit the EVR at any time. If, based on information in the EVR, VA decides that the former beneficiary was entitled to benefits for any part of the period of time in which payment had been discontinued for failure to file an EVR, VA will offset the debt for that part of the period. Once the debt has been completely offset, VA will not pay additional benefits for that period.

(Authority: 38 U.S.C. 501(a), 1506)

§ 5.709 Claimant and beneficiary responsibility to report changes.

(a) Claimants and beneficiaries of pension or parents' dependency and indemnity compensation (DIC) must promptly notify VA of any material change in a factor that affects entitlement to the benefit that they are claiming or receiving. VA may request

any information or evidence that is necessary to determine whether the individual is entitled (or continues to be entitled) to a benefit. See § 5.708 (explaining the circumstances when VA will require an EVR).

(b) The following table lists factors that often change and that affect entitlement to pension or parents' DIC.

The table is intended solely for informational purposes. It is not intended to confer any substantive rights and does not list every factor that could affect entitlement to pension or parents' DIC.

Benefit type (beneficiary)	Claimant/beneficiary and applicable dependent(s)	Factors affecting Claimant/Beneficiary's entitlement to pension or parents' DIC benefits. ("YES" indicates that the factor may affect entitlement. "NO" indicates that the factor does not affect entitlement)					
		Income	Marital status	Net worth	Number of children (See § 5.220)	Nursing home status	School attendance (if 18 or older)
Improved							
Disability Pension (Veteran)	Veteran	YES	YES	YES	YES	YES	NO.
	Dependent spouse	YES	YES	YES	YES	NO	NO.
	Dependent child	YES ¹	YES	YES	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	YES	YES	YES	NO.
	Dependent child	YES ¹	YES	YES	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES ¹	YES	YES	NO	NO	YES.
	Child's legal custodian	YES ⁴	NO	YES	NO	NO	NO.

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Disability Pension (Veteran)	Veteran	YES	YES	YES	YES	YES	NO.
	Dependent spouse	YES ²	YES	NO	YES	NO	NO.
	Dependent child	NO	YES	NO	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	YES	YES	YES	NO.
	Dependent child	YES ³	YES	NO	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES ⁵	YES	YES	NO	NO	YES.
	Child's legal custodian	NO	NO	NO	NO	NO	NO.

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Disability Pension (Veteran)	Veteran	YES	YES	NO	YES	YES	NO.
	Dependent spouse	NO	YES	NO	YES	NO	NO.
	Dependent child	NO	YES	NO	NO	NO	YES.
Death Pension (Surviving spouse)	Surviving spouse	YES	YES	NO	YES	YES	NO.
	Dependent child	YES ³	YES	NO	NO	NO	YES.
Death Pension (Surviving child)	Surviving child	YES	YES	NO	NO	NO	YES.
	Child's legal custodian	NO	NO	NO	NO	NO	NO.
Parents' DIC (Surviving parent)	Surviving parent	YES	YES	NO	NO	YES	NO.
	Surviving parent's spouse	YES ⁶	YES	NO	NO	YES	NO.

¹ A child's earned income (wages and/or salary) is not a factor under certain circumstances described in § 5.411(b).

² For exceptions to this rule, see § 5.473.

³ A child's income is not a factor unless it is turned over to the surviving spouse. (See § 5.473)

⁴ The income of a custodian is a factor unless the custodian is an institution rather than an individual.

⁵ Only unearned income (income other than wages and/or salary) is a factor. (See § 5.473)

⁶ The income of a surviving parent's spouse is a factor unless the parent and spouse are not living together.

(Authority: 38 U.S.C. 501(a), 1315, 1521(b), (c), and (h); 1522, 1541(b), (c), and (g); 1542; 1543; sec. 306, Pub. L. 95-588 92 Stat. 2497)

§ 5.710 Adjustment in benefits due to reduction or discontinuance of a benefit to another payee.

(a) *Effect of reduction or discontinuance of another payee's benefit.* If a payee becomes entitled to pension, disability compensation, or dependency and indemnity compensation (DIC), or an increase in such a benefit because payment of the

same benefit to another payee has been reduced or discontinued, the award or increase will be paid without the filing of a new claim, except as provided in paragraph (b) of this section.

(b) *Effective date.* VA will award or increase the payee's benefit and pay the appropriate rate effective the day following the reduction or discontinuance of the benefit to the other payee. If VA requests information or evidence, it must be received no later than 1 year after the date of VA's

request. If the information or evidence is not received within 1 year, the effective date will be the date VA receives a new claim.

(c) *Rate payable.* The rate for the persons entitled will be the rate that would have been payable if they had been the only original persons entitled.

(Authority: 38 U.S.C. 501(a))

§ 5.711 Payment to dependents due to the disappearance of a veteran for 90 days or more.

(a) *General.* When a veteran receiving or entitled to receive disability compensation, Section 306 Pension, or Improved Pension disappears for 90 days or more, benefits will be paid to the veteran's dependent(s) as provided in this section. Dependents will be paid under this section only if the veteran's whereabouts are unknown to the dependent(s) and to VA and a claim is received from the dependent(s).

(b) *Veteran receiving or entitled to receive disability compensation.* If the veteran was receiving or was entitled to receive disability compensation, benefits may be paid to the veteran's spouse, child, and/or dependent parent.

(1) *Rate payable.* The total amount the veteran's dependent(s) will be paid is the lesser of either the total amount of dependency and indemnity compensation (DIC) that would be payable if the veteran had died from a service-connected disability or the amount of disability compensation (minus any authorized insurance deductions) the veteran would have received or been entitled to receive at the time of the veteran's disappearance.

(i) If VA pays DIC pursuant to this paragraph, then it will pay benefits to the dependents as if the veteran were deceased.

(ii) If VA pays disability compensation pursuant to this paragraph, then it will pay benefits in equal amounts to the dependents.

(2) *Effective date of payments.* (i) If a claim for benefits under this section is received no later than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, then payments to the veteran's dependent(s) will be payable effective the first day of the month after the month for which VA last paid benefits to the veteran.

(ii) If a claim for benefits under this section is received more than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the date VA receives the claim.

(c) *Veteran receiving or entitled to receive pension.* If the veteran was receiving or entitled to receive Section 306 Pension or Improved Pension, benefits may be paid to the veteran's spouse and/or child(ren). The veteran's permanent and total disability status, income, and net worth will be presumed to continue unchanged.

(1) *Rate payable.* The total amount payable to the veteran's dependent(s) will be either the rate of Improved Death

Pension payable if the veteran had died of a non-service-connected disability or the amount of pension the veteran would have received at the time of disappearance, whichever amount is less.

(2) *Effective date of payments.* (i) If a claim is received no later than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the first day of the month after the month for which VA last paid benefits to the veteran.

(ii) If a claim for benefits is received more than 1 year after the first day of the month after the month for which VA last paid benefits to the veteran, payments to the veteran's dependent(s) will be payable effective the date VA receives the claim.

(d) *Discontinuance of payments to veteran's dependent(s)—(1) Veteran's whereabouts become known.* If VA becomes aware of the veteran's whereabouts, payments to the veteran's dependent(s) will be discontinued effective the first day of the month after the month for which VA last paid benefits to the veteran's dependent(s).

(2) *Veteran presumed dead.* Payments to the veteran's dependent(s) will be discontinued if the veteran is presumed dead under § 5.502, "Proving death after 7 years of continuous, unexplained absence."

(Authority: 38 U.S.C. 1158, 1507)

§ 5.712 Suspension of VA benefits due to the disappearance of a payee.

(a) If a payee's whereabouts are unknown, then VA will suspend payment of pension, disability compensation, dependency and indemnity compensation, the monetary allowance under 38 U.S.C. chapter 18 for children disabled from spina bifida or with certain birth defects, or other monetary allowances.

(b) If benefits were suspended under paragraph (a) of this section, then VA will resume payments if the payee's whereabouts become known. The effective date of payments will be the first day of the first month for which benefits were suspended if entitlement is otherwise established. Retroactive payments under this paragraph (b) will be reduced by the amount of any payments made to a veteran's dependents under § 5.711.

(Authority: 38 U.S.C. 501(a))

§ 5.713 Restriction on VA benefit payments to an alien located in enemy territory.

(a) *Restriction on payment.* VA will discontinue all VA benefits except insurance payments to an alien who is:

(1) Located in the territory of an enemy of the United States or an enemy of any ally of the United States; or

(2) Located in territory which is under the military control of an enemy of the United States or an enemy of any ally of the United States.

(b) *Apportionment of benefits.* VA may apportion to the dependent(s) of an affected alien all or any part of the benefits discontinued under paragraph (a) of this section.

(1) The amount payable to each dependent may not exceed the amount that would be payable if the alien had died.

(2) VA will discontinue payments to the dependents effective the date it receives notice that the alien is no longer located in the territory described in paragraph (a) of this section.

(3) VA will reduce or discontinue payments to a dependent upon the death of the alien or dependent, upon reduction or discontinuance of the alien's benefits, or when dependent status ends.

(c) *Claims for discontinued benefits.* See § 5.715, "Claims for undelivered or discontinued benefits."

(Authority: 38 U.S.C. 5112(a), 5308)

§ 5.714 Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list.

(a) *Definitions.* For purposes of this part 5:

(1) *Payee* means a person to whom a VA benefit check is payable.

(2) *Special deposit account* means the "Secretary of the Treasury, Proceeds of Withheld Foreign Checks" account established under 31 U.S.C. 3329(b)(4).

(3) *Treasury Department list* is the list of countries identified by the Secretary of the Treasury in 31 CFR 211.1, "Withholding delivery of checks," to which checks cannot be delivered with reasonable assurance that the payee will actually receive the check and be able to negotiate it for full value.

(b) *Evidence requests.* Unless a claimant or payee who is living in a country on the Treasury Department list requests the alternative means of delivery described in paragraph (c) of this section, VA will not request evidence in support of a claim for VA benefits if such evidence would be obtained from a country on the Treasury Department list.

(c) *Restriction on check delivery.* VA will not send benefit checks to a payee

located in a country on the Treasury Department list or to a guardian or other person in the United States or a territory or possession of the United States who is legally responsible for the care of a payee located in a country on the Treasury Department list.

(d) *Alternative delivery permitted.* If requested by a payee located in a country on the Treasury Department list, VA will send VA benefit checks to him or her in care of a U.S. Foreign Service post, specified by the payee, in a country that is not on the Treasury Department list.

(e) *Disposition of benefit checks.* If the payee does not request the alternative means of delivery described in paragraph (d) of this section, VA benefit checks that are not delivered because of the restriction described in paragraph (c) of this section will be deposited into the special deposit account or into the U.S. Treasury as miscellaneous receipts, as required by 31 U.S.C. 3329(b) and 3330(b).

(f) *Claims for undelivered benefits.* See § 5.715, “Claims for undelivered or discontinued benefits.”

(Authority: 31 U.S.C. 3329, 3330)

§ 5.715 Claims for undelivered or discontinued benefits.

(a) *Definitions.* For the definitions of “payee,” “special deposit account,” and “Treasury Department list,” see § 5.714(a).

(b) *Claims for undelivered or discontinued benefits.* (1) A payee may file with VA a claim for:

(i) Any amounts not paid because awarded benefits were discontinued under § 5.713, “Restriction on VA benefit payments to an alien located in enemy territory”; or

(ii) Any undelivered benefit payments deposited to the payee’s credit in the special deposit account or into the U.S. Treasury as miscellaneous receipts as described in § 5.714(e).

(2) There is no time limit for filing such a claim.

(3) Undelivered amounts will be released or a discontinued benefit resumed only if:

(i) For a payee whose VA benefits were discontinued under § 5.713, “Restriction on VA benefit payments to an alien located in enemy territory,” the payee is no longer subject to the restriction in § 5.713(a);

(ii) For a payee whose benefit checks were withheld under § 5.714, “Restriction on delivery of VA benefit payments to payees located in countries on Treasury Department list,” the payee is no longer subject to the restriction in § 5.714(c);

(iii) For a payee whose benefit checks were withheld under § 5.714, the country in which the payee is located is removed from the Treasury Department list; or

(iv) For a payee whose benefit checks were withheld under § 5.714, the payee requests the alternative means of delivery described in § 5.714(d).

(Authority: 31 U.S.C. 3329)

(c) *Forfeiture for treasonable acts.*

Payment is subject to forfeiture of benefits for treasonable acts as provided in § 5.677.

(d) *Evidence requests.* Subject to § 5.90, VA may request evidence necessary to support a claim under this section. Evidence VA may request includes:

(1) Satisfactory evidence that the payee has not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy; and

(2) Evidence of continued entitlement to benefits during the time that awarded benefits were discontinued or benefit payments were undelivered.

(Authority: 38 U.S.C. 5308)

(e) *Germany and Japan.* No payments will be made for any period before the date of filing a new claim if payments were discontinued before July 1, 1954, because the payee was a citizen or subject of Germany or Japan.

(Authority: 38 U.S.C. 5309)

(f) *Payment of funds in special deposit account upon death of a payee.* See § 5.565, “Special rules for payment of VA benefits on deposit in a special deposit account when a payee living in a foreign country dies.”

(Authority: 31 U.S.C. 3330)

§§ 5.716–5.739 Reserved.

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