

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900-AL76

Benefits for Certain Filipino Veterans and Survivors

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language provisions concerning benefits payable to certain Filipino veterans and their survivors. 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 and VA personnel in locating and understanding these provisions. We also propose to further amend two previously proposed part 5 sections to make them consistent with other changes that have occurred since they were initially proposed.

DATES: Comments must be received by VA on or before August 29, 2006.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; or through www.Regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL76." All 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) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Bob White, Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6428.

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 benefits payable to certain Filipino veterans and their survivors. 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 all provisions governing a specific benefit are located

in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will allow claimants, beneficiaries, and their representatives, as well as VA personnel, 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, delegations of authority, 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 (NPRM)s due to its size. The first of these three separate NPRMs, concerning VA's duties and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680.

"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.

"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 on July 27, 2004. See 69 FR 44614.

“Subpart F—Nonservice-Connected Disability Pensions and Death Pensions” would include information regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 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 as 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.

“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, but unpaid at death; 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 will be 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 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.

“Subpart I—Benefits for Certain Filipino Veterans and Survivors” would pertain to the various benefits available to Filipino veterans and their survivors. This subpart is the subject of this document.

“Subpart J—Burial Benefits” would pertain to burial allowances.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement 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, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, “Subpart M—Apportionments and Payments to Fiduciaries or 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 we believe 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 NPRMs.

Overview of Proposed Subpart I Organization

This NPRM pertains to regulations governing benefits for certain Filipino veterans and their survivors. These regulations would be contained in proposed Subpart I 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 changes are proposed.

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 the 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”)
5.610	3.40
5.611	3.41
5.612	New
5.613	3.42
5.614	3.405
5.615(a)	3.251(a)(3)
5.615(b)	3.251(a)(1), (3)
5.616	3.1605(a) second sentence
5.617(a)	3.43(a)
5.617(b)	3.43(b)
5.617(c)	3.43(c)
5.618(a), (b) ...	3.500(p)
5.618(c)	3.505

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 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.

Content of Proposed Regulations

Section 5.610 Eligibility for VA Benefits Based on Philippine Service

Proposed § 5.610 is based on current § 3.40. We propose to use consistent terms to describe the two types of Philippine Scouts. Scouts who enlisted prior to October 6, 1945, are variously

referred to in regulations, manuals, and case law as Regular Philippine Scouts or Old Philippine Scouts. Those who enlisted during the period from October 6, 1945, to June 30, 1947, inclusive, are referred to as Other Philippine Scouts, Special Philippine Scouts, or New Philippine Scouts. Since the date of enlistment is the distinguishing factor between the two groups, it is clearer to refer to them as Old Philippine Scouts and New Philippine Scouts. We propose to use these two terms exclusively throughout the Filipino regulations in subpart I. This will provide consistent terminology and reduce any confusion caused by using more than one term for a particular group.

One purpose of proposed subpart I of part 5 is to assemble in one place all of the adjudication regulations dealing with benefits for certain Filipino veterans and their survivors. Consistent with this purpose we believe that proposed subpart I should not make references to groups of non-Filipino veterans. Proposed § 5.610(a) is based on current § 3.40(a), which references the service of three non-Filipino groups: the Insular Force of the Navy, the Samoan Native Guard, and the Samoan Native Band of the Navy. We propose not to repeat those references in proposed § 5.610(a). Instead, we propose to include those groups in a more appropriate section of proposed part 5 dealing with service requirements for veterans.

On January 30, 2004, we published proposed rules on service requirements in the **Federal Register** (69 FR 4820). Proposed § 5.28 listed 16 individuals and groups that are considered to have performed active military service. Proposed § 5.28(k) was titled "Philippine Scouts and others" and simply referred readers to current § 3.40 for more specific information. We propose to further amend proposed § 5.28(k) to state that certain Philippine service will constitute active military service for purposes of certain VA benefits as specified in § 5.610, and to include the three non-Filipino groups noted above along with the specific benefits eligibility conferred on those groups by such active military service, namely pension, compensation, dependency and indemnity compensation, and burial benefits at the full-dollar rate. This listing will make it easier for readers to identify each type of insular force that performed active military service.

Section 5.611 Philippine Service: Determination of Periods of Active Military Service, Including Periods of Active Military Service While in Prisoner of War Status

Proposed § 5.611 is based on current § 3.41, and except for a few minor nonsubstantive changes for clarity and readability, the regulatory texts of both sections are identical. We propose to remove the term "a Regular Philippine Scout" and insert the term "an Old Philippine Scout" in its place, consistent with the new terminology in proposed § 5.610.

Section 5.612 Overview of Benefits Available to Filipino Veterans and Their Survivors

Proposed § 5.612 is a new regulation describing all part 5 benefits available to Filipino veterans, dependents, and/or their survivors based on the type of service performed by the veteran. Proposed paragraph (a) presents that information in chart form so that readers can more easily identify the available benefits. See 38 U.S.C. 107(a)(3) and (b)(2). We do not intend that proposed § 5.612 confer any substantive right to the benefits listed. Proposed paragraph (b) refers readers to certain other regulations that are pertinent to Filipino veterans and their survivors but appear in other subparts of proposed part 5.

Section 5.613 Compensation at the Full-Dollar Rate for Certain Filipino Veterans or Their Survivors Residing in the United States

Proposed § 5.613 is a restatement of current § 3.42, concerning the payment of compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States. Proposed § 5.613(d) provides the general authority for reduction from the full-dollar rate when certain eligibility criteria are not satisfied as well as the general authority for resumption of the full-dollar rate when those eligibility criteria are again satisfied. These provisions are based on current § 3.42, which sets forth requirements for continued eligibility for the full-dollar rate, but does not in all instances clearly explain how VA will reduce benefits based on failure to meet those criteria or how VA will reinstate benefits once the criteria are again satisfied. We propose to provide this information in § 5.613(d). Proposed § 5.613(d)(1) is based on current § 3.42(d)(1). We have added information to more clearly explain how VA will reduce benefits based on absence from the United States and how VA will resume full-dollar benefits based on return to the United

States. Proposed § 5.613(d)(2)-(4) are based on current § 3.42(d)(2)-(4). We have added information to more clearly explain how VA will resume full-dollar rate payments under these provisions when a payee regains U.S. citizenship or lawful permanent resident alien status, when VA receives requested evidence of continued eligibility, and when VA receives evidence of a valid U.S. mailing address. There are also some nonsubstantive changes. In the introductory text of paragraph (b), we propose to replace "§ 3.40(b), (c), or (d)" with "§ 5.610(b), (c), or (d)." Also, in paragraphs (d)(2) and (d)(4), we propose to replace current "§ 3.505" with "§ 5.618". These nonsubstantive changes make the provisions consistent with the renumbering of the regulations proposed herein. In addition, we are proposing a minor change in the text of paragraph (a)(4) to improve readability.

While reviewing proposed § 5.613 for consistency with current § 3.42 we noted technical errors in § 3.42(c)(4)(ii). Because this section deals with veterans or their survivors who are alive, it should be written in the present tense, and the words "on the date of death" are not appropriate. Proposed § 5.613(c) does not contain these technical errors. Current § 3.42(c)(4)(ii) will be corrected in a separate NPRM.

Section 5.614 Filipino Veterans and Their Survivors: Effective Dates for Benefits at the Full-Dollar Rate

Proposed § 5.614 is based on current § 3.405. We have added provisions to specify the effective dates for resumption of benefits at the full-dollar rate following reductions under proposed § 5.613(d)(3) and (4). Part 3 citations are replaced with Part 5 citations. In addition we have added the provisions of § 3.42(e) because it will be more convenient for readers to have all effective date provisions in one regulation.

Section 5.615 Parents' Dependency and Indemnity Compensation Based on Certain Philippine Service

Proposed § 5.615(b) restates current § 3.251(a)(1) and (3), which govern parents' dependency and indemnity compensation for survivors of certain Filipino veterans. For clarity, we propose to restate here the provision contained in current § 3.251(a)(1) (proposed § 5.510(d)) which provides that dependency and indemnity compensation is not payable to a parent or parents whose annual income exceeds the limitations set forth in 38 U.S.C. 1315(b), (c), or (d). The income limitations under 38 U.S.C. 1315 and the benefits paid are calculated at the

half-dollar rate, unless the surviving parent is a U.S. resident and either a U.S. citizen or a lawful permanent resident alien. If so, the parent is paid at the full-dollar rate.

Section 5.616 Hospitalization in the Philippines

This regulation restates the rule in current § 3.1605(a) that death while hospitalized in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not qualify the deceased for burial benefits based on death while properly hospitalized by VA. While this regulation could affect non-Filipinos hospitalized in the Philippines, it is duplicated here because it most frequently affects Filipino veterans. We also propose to correct the authority citations that appear in current § 3.1605(a) which refer to 38 U.S.C. 631, 632, and 633. The correct citations are 38 U.S.C. 1731, 1732, and 1733.

Section 5.617 Burial Benefits at the Full-Dollar Rate for Certain Filipino Veterans Residing in the United States on the Date of Death

Proposed § 5.617 restates, without substantive change, current § 3.43 concerning the payment of burial benefits at the full-dollar rate based on the service of certain Filipino veterans who were residing in the United States at the time of death. We propose to replace the term “active military, naval, or air service” with “active military service.” VA explained its reasoning for adopting the term “active military service” in the NPRM for subpart B (Service Requirements for Veterans). See 69 FR 4820, 4822 (January 30, 2004).

Section 5.618 Filipino Veterans and Their Survivors: Effective Dates of Reductions and Discontinuances for Benefits at the Full-Dollar Rate

Proposed § 5.618(a) is a cross reference to the general effective date rule on reductions and discontinuances. Proposed § 5.618(b) restates the effective date provision in current § 3.500(p) (effective date for reduction or discontinuance based on the withdrawal of recognition of service). This is consistent with our effort throughout the proposed part 5 regulations to separate all the various provisions for effective dates for award reductions and discontinuances contained in § 3.500, and to associate them with the regulations governing the specific benefit to which they pertain. We believe this will make these provisions easier to locate. We propose to replace the language “date of last payment” with “the first day of the month that follows the month for which VA last

paid benefits,” which we believe is more clear and specific. We propose no substantive changes to the regulatory text.

Proposed § 5.618(c) is based on current § 3.505 which does not clearly specify the effective date for reductions under § 3.42(d)(3) for failure to verify continued eligibility. In such cases the effective date would be determined under current § 3.652 (proposed § 5.104). Therefore we have included a reference to the part 5 counterpart to § 3.652 in § 5.618(c)(4). We have also made a few minor nonsubstantive changes for clarity and readability.

Amendment of Previously Proposed Part 5 Rules

As noted earlier in this document in connection with the discussion about proposed § 5.610, we are proposing to further amend previously proposed § 5.28(k) to list the certain Philippine service and the three non-Filipino groups mentioned in current § 3.40(a) as having performed active military service along with the specific benefits eligibility conferred on those groups by virtue of such service.

In addition, on July 27, 2004, we published proposed rules in the **Federal Register** dealing with presumptions of service connection (69 FR 44614). One of those proposed rules, § 5.264, dealt with presumptive service connection for certain diseases based on status as a former prisoner of war, and paragraph (b) of that proposal listed five diseases that could be presumptively service connected regardless of the length of internment. Proposed § 5.264(b) was based on the then-current § 3.309(c) and section 201 of the Veterans Benefits Act of 2003, Pub. L. 108–183, 117 Stat. 2651 (Dec. 16, 2003) which eliminated the 30-day length-of-internment requirement for those five listed diseases. Subsequently, we amended 3.309(c), through an interim final rule in the **Federal Register** on October 7, 2004 (69 FR 60083), by adding three more diseases and their complications to the list of diseases that could be presumptively service connected regardless of the length of internment. Those additional diseases are atherosclerotic heart disease, hypertensive vascular disease, and stroke and their complications. That interim final rule became a final rule, without change, on June 28, 2005 (70 FR 37040).

Therefore, we must now add those three diseases to § 5.264(b) (which was previously published as proposed on July 27, 2004, as noted above). That would make proposed § 5.264(b)

consistent with current § 3.309(c) on which it is based.

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

All collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in this proposed rule have existing OMB approval. No changes are made in this proposed rule to those collections of information.

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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action because it may raise novel legal or policy issues.”

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, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

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 Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; and 64.115, Veterans Information and Assistance.

List of Subjects in 38 CFR Part 5

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

Approved: April 13, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, and as proposed to be amended at 69 FR 44624, July 27, 2004, as follows:

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

Subpart B—Service Requirements for Veterans

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

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

2. Section 5.28 as proposed to be added at 69 FR 4837, January 30, 2004, is further amended by revising paragraph (k) to read as follows:

§ 5.28 Other individuals and groups designated as having performed active military service.

* * * * *

(k) *Insular Forces*—(1) *Philippine forces*. Service in certain Philippine forces constitutes active military service

for purposes of certain benefits as specified in § 5.610.

(2) *Other insular forces*. Service in the Insular Force of the Navy, Samoan Native Guard, or Samoan Native Band of the Navy constitutes active military service for purposes of entitlement to pension, compensation, dependency and indemnity compensation, and burial benefits at the full-dollar rate.

* * * * *

Subpart E—Claims for Service Connection and Disability Compensation

3. The authority citation for subpart E continues to read as follows:

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

4. Section 5.264 as proposed to be added at 69 FR 44627, July 27, 2004, is further amended by revising paragraph (b) to read as follows:

§ 5.264 Diseases VA presumes are service connected in former prisoners of war.

* * * * *

(b) *Diseases presumed service connected following any period of internment*. VA will presume service connection for the following diseases if the criteria of paragraph (a) of this section are met:

Any of the anxiety disorders as listed in § 4.130, including post-traumatic stress disorder.

Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, and arrhythmia).

Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

- Post-traumatic osteoarthritis.
Psychosis.
Stroke and its complications.

* * * * *

5. Part 5 is further amended by adding subpart I to read as follows:

Subpart I—Benefits for Certain Filipino Veterans and Survivors

Sec.

5.610 Eligibility for VA benefits based on Philippine service.

5.611 Philippine service: Determination of periods of active military service, including periods of active military service while in prisoner of war status.

5.612 Overview of benefits available to Filipino veterans and their survivors.

5.613 Compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States.

5.614 Filipino veterans and their survivors: Effective dates for benefits at the full-dollar rate.

5.615 Parents' dependency and indemnity compensation based on certain Philippine service.

5.616 Hospitalization in the Philippines.

5.617 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

5.618 Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate.

5.619–5.629 [Reserved]

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

Subpart I—Benefits for Certain Filipino Veterans and Survivors

§ 5.610 Eligibility for VA benefits based on Philippine service.

(a) *Old Philippine Scouts*—(1) *Included service*. Service in the Old Philippine Scouts (Scouts who enlisted prior to October 6, 1945) constitutes active military service for purposes of pension, compensation, dependency and indemnity compensation, and burial benefits.

(2) *Rate of payment*. Benefits are payable at the full-dollar rate.

(3) *Acceptable evidence of service in the Old Philippine Scouts*. Service must be established as specified in § 5.40.

(b) *New Philippine Scouts*—(1) *Included service*. All enlistments and reenlistments of New Philippine Scouts in the Regular Army between October 6, 1945, and June 30, 1947, inclusive, constitute active military service for purposes of compensation and dependency and indemnity compensation, and, in the case of deaths occurring on or after December 16, 2003, burial benefits.

(2) *Rate of payment*. Except as provided in §§ 5.613 and 5.617 benefits based on service described in paragraph (b)(1) of this section are payable at a rate of \$0.50 for each dollar authorized under the law.

(3) *Excluded service*. Paragraph (b)(1) of this section does not apply to officers who were commissioned in connection with the administration of Pub. L. 79–190, 59 Stat. 538.

(4) *Acceptable evidence of service in the New Philippine Scouts*. Service must be established as specified in § 5.40.

(c) *Commonwealth Army of the Philippines*—(1) *Included service*. Service of members of the Commonwealth Army of the Philippines constitutes active military service for purposes of compensation, dependency and indemnity compensation, and

burial allowance, from and after the dates and hours, respectively, when they were called into service of the Armed Forces of the United States by orders issued from time to time by the General Officer, U.S. Army, pursuant to the Military Order of the President of the United States dated July 26, 1941.

(2) *Rate of payment.* Except as provided in §§ 5.613 and 5.617 benefits based on service described in paragraph (c)(1) of this section are payable at a rate of \$0.50 for each dollar authorized under the law.

(3) *Presumption of soundness.* Unless the record shows examination at the time of entrance into the Armed Forces of the United States, such persons are not entitled to the presumption of soundness. This also applies upon reentering the Armed Forces after a period of inactive service.

(4) *Acceptable evidence of service in the Commonwealth Army of the Philippines.* Service must be established as specified in § 5.40.

(d) *Guerrilla service*—(1) *Included service.* Persons who served as guerrillas under a commissioned officer of the United States Army, Navy, or Marine Corps, or under a commissioned officer of the Commonwealth Army of the Philippines recognized by and cooperating with the United States Forces are considered to have performed active military service for purposes of compensation, dependency and indemnity compensation, and burial allowance. Service as a guerrilla by a member of the Old Philippine Scouts or the Armed Forces of the United States is considered service in his or her regular status. (See paragraph (a) of this section.)

(2) *Rate of payment.* Except as provided in §§ 5.613 and 5.617, benefits based on service described in paragraph (d)(1) of this section are payable at a rate of \$0.50 for each dollar authorized under the law.

(3) *Acceptable evidence of guerrilla service.* Service must be established as specified in § 5.40. The following certifications by a United States service department in accordance with § 5.40 will be accepted as establishing guerrilla service:

(i) Recognized guerrilla service;
(ii) Unrecognized guerrilla service under a recognized commissioned officer only if the person was a former member of the United States Armed Forces (including the Old Philippine Scouts), or the Commonwealth Army of the Philippines. This excludes civilians.

(4) *Unacceptable evidence of guerrilla service.* A certification of anti-Japanese

activity will not be accepted as establishing guerrilla service.

(e) *Combined service.* Where a veteran who had Commonwealth Army of the Philippines or guerrilla service and also had other service, wartime or peacetime, in the Armed Forces of the United States, has disabilities which are compensable separately on a dollar and a \$0.50 for each dollar authorized basis, and the disabilities are combined under the authority contained in 38 U.S.C. 1157, the evaluation for which dollars are payable will be first considered and the difference between this evaluation and the combined evaluation will be the basis for computing the amount payable at the rate of \$0.50 for each dollar authorized.

(Authority: 38 U.S.C. 107)

Cross References: § 5.21, "Service VA recognizes as active military service." § 5.28, "Other individuals and groups designated as having performed active military service." § 5.39, "Minimum active duty service requirement for VA benefits." § 5.40, "Service records as evidence of service and character of discharge that qualify for VA benefits."

§ 5.611 Philippine service: Determination of periods of active military service, including periods of active military service while in prisoner of war status.

(a) *Period of service.* For an Old Philippine Scout, a member of one of the regular components of the Commonwealth Army of the Philippines while serving with the Armed Forces of the United States, and a New Philippine Scout, the period of active military service will be from the date certified by the United States Armed Forces as the date of enlistment or the date of reporting for active duty, whichever is later, to the date of release from active duty, discharge, death, or in the case of a member of the Commonwealth Army of the Philippines, June 30, 1946, whichever is earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of, or due to, the capitulation.

(2) Escape from prisoner-of-war status.

(3) Parole by the Japanese.

(4) Beginning of missing-in-action status, except where factually shown that at that time he or she was with his or her unit or death is presumed to have occurred while carried in such status. However, where there is credible evidence that he or she was alive after commencement of his or her missing-in-action status, the presumption of death

will not apply for Department of Veterans Affairs purposes.

(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service, unrecognized guerrilla service under a recognized commissioned officer, or periods of service in units which continued organized resistance against the Japanese prior to formal capitulation will be considered return to active duty for the period of such service.

(b) *Prisoner-of-war status.* Active military service of an Old Philippine Scout or a member of the Commonwealth Army of the Philippines serving with the Armed Forces of the United States will include a prisoner-of-war status immediately following a period of active duty, or a period of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer. In those cases where, following release from active duty as set forth in paragraph (a) of this section, the veteran is factually found by the Department of Veterans Affairs to have been injured or killed by the Japanese because of anti-Japanese activities or because of his or her former service in the Armed Forces of the United States, such injury or death may be held to have been incurred in active military service for Department of Veterans Affairs purposes. Such determinations shall be based on all available evidence, including United States service department reports, and consideration shall be given to the character and length of the veteran's former active military service in the Armed Forces of the United States.

(c) *Arrest.* A prisoner-of-war status based upon arrest during general zonation will not be sufficient of itself to bring a case within the definition of return to military control.

(d) *Period of guerrilla service.* The active service of a guerrilla will be the period certified by a United States service department.

(Authority: 38 U.S.C. 107)

Cross reference: § 5.40, "Service records as evidence of service and character of discharge that qualify for VA benefits."

§ 5.612 Overview of benefits available to Filipino veterans and their survivors.

(a) *General.* The following chart lists many of the benefits that VA may provide based on qualifying service in the Republic of the Philippines. The chart, itself, does not confer any substantive right to the benefit listed.

38 CFR PART 5—BENEFITS AVAILABLE TO FILIPINO VETERANS AND SURVIVORS

Benefit	Armed Forces of the U.S., including Old Philippine Scouts (§ 5.610(a))	New Philippine Scouts (§ 5.610(b))	Commonwealth Army of the Philippines/Guerillas (§ 5.610(c) and (d))
(1) Disability Compensation	Yes—Full-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate.
(2) Pension	Yes—Full-Rate	No	No.
(3) Clothing Allowance	Yes—Full-Rate	Yes—Half-Rate	Yes—Half Rate.
(4) DIC	Yes—Full-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate.
(5) Parents' DIC	Yes—Full-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate	Yes—Full-Rate if U.S. citizen or permanent resident alien and residing in U.S. Otherwise, Half-Rate.
(6) Burial Benefits	Yes—Full-Rate	Yes—Full-Rate if veteran dies on or after 12/16/03 and was a U.S. citizen or permanent resident alien and residing in U.S. at time of death (in some cases). See 5.617 for specific requirements. Otherwise, Half-Rate if death occurred on or after 12/16/03. Not payable for death prior to 12/16/03	Yes—Full-Rate if veteran dies on or after 11/1/00 and was U.S. citizen or permanent resident alien and residing in U.S. at time of death (in some cases). See 5.617 for specific requirements. Otherwise, Half-Rate.

(b) *Other sections relevant to claims based on qualifying service in the Republic of the Philippines—(1) Affidavits prepared in the Republic of the Philippines. See § 5.132.*

(2) Child adopted under foreign law. See § 5.225.

(3) Dependents' educational assistance for a child based on the child's parent's service in the Commonwealth Army of the Philippines or as a New Philippine Scout as defined in § 5.610(b), (c), or (d). See § 5.586 of this part relating to certification of dependents' educational assistance.

(4) Forfeiture based on fraud or treason committed in the Philippine Islands. See §§ 5.676 and 5.677.

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

§ 5.613 Compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States.

(a) *Definitions.* For purposes of this section:

(1) *United States (U.S.)* means the states, territories, and possessions of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means that an individual's principal, actual dwelling place is in the U.S. and that the individual meets the residency requirements of paragraph (c)(1) of this section.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that an individual has been, and continues to be, lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code.

(b) *Eligibility requirements.* Compensation or dependency and indemnity compensation is payable at the full-dollar rate based on service described in § 5.610(b), (c), or (d) to a veteran or a veteran's survivor who is residing in the United States (U.S.) and is either:

- (1) A citizen of the U.S., or
- (2) An alien lawfully admitted for permanent residence in the U.S.

(c) *Evidence of eligibility for full-dollar rate benefits.* (1)(i) Evidence establishing that the veteran or the veteran's survivor is residing in the U.S. should identify the veteran's or veteran's survivor's name and relevant dates, and may include:

(A) A valid driver's license issued by the state of residence;

(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;

(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;

(D) Hospital or medical records showing medical treatment or hospitalization, and showing the name of the medical facility or treating physician;

- (E) Property tax bills and receipts; and
- (F) School records.

(ii) A Post Office box mailing address in the veteran's or veteran's survivor's name does not constitute evidence showing that the veteran or veteran's survivor is lawfully residing in the United States.

(2) A valid original or copy of one of the following documents is required to prove that the veteran or the veteran's survivor is a natural born citizen of the U.S.:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate.

(3) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is a naturalized citizen of the U.S., or a valid U.S. passport, will be sufficient proof of such status.

(4) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is an alien lawfully admitted for permanent residence in the U.S. will be sufficient proof of such status.

(d) *Continued eligibility.* (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran or a veteran's survivor must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time, unless good cause is shown. When a veteran's or veteran's survivor's absence from the U.S. exceeds one of those limits, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under

the law, effective on the date determined under § 5.618, "Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate." If such veteran or veteran's survivor returns to the U.S., VA will resume payments at the full-dollar rate, effective on the date determined under § 5.614, "Filipino veterans and their survivors: Effective dates for benefits at the full-dollar rate." However, if a veteran or a veteran's survivor becomes eligible for full-dollar rate benefits for the first time on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran or a veteran's survivor to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S., or within 30 days of losing either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran or a veteran's survivor no longer meets the eligibility requirements of paragraph (b) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 5.618. If such veteran or veteran's survivor regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective on the date determined under § 5.614.

(3) When requested to do so by VA, a veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship or permanent resident alien status requirements of paragraph (b) of this section. VA will advise the veteran or survivor at the time of the request that the verification must be received within 60 days or the rate of payment will be reduced. If VA does not receive the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 5.104, "Certifying continuing eligibility to receive benefits." If VA subsequently receives the requested evidence of continued eligibility, it will resume payments at the full-dollar rate, effective on the date determined under § 5.614.

(4) A veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must promptly notify VA of any change in his or her address. If mail from VA to the veteran or survivor is returned to VA by the U.S. Postal Service, VA will make reasonable

efforts to determine the correct mailing address. If VA is unable to determine the correct mailing address through reasonable efforts, VA will reduce benefit payments to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 5.618. If VA subsequently receives evidence of a valid U.S. mailing address, it will resume payments at the full-dollar rate, effective on the date determined under § 5.614.

(Authority: 38 U.S.C. 107, 501(a))

§ 5.614 Filipino veterans and their survivors: Effective dates for benefits at the full-dollar rate.

Public Laws 106-377 and 108-183, which provide disability compensation and dependency and indemnity compensation at full-dollar rates to certain Filipino veterans and their survivors, are considered liberalizing laws. As such, the provisions of § 5.152, "Effective dates of awards of VA benefits based on a liberalizing change in law," apply when determining the effective date of an award. If the requirements of § 5.152 are not satisfied, then the effective date of an award of benefits at the full-dollar rate under § 5.613, "Compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States," will be determined as follows:

(a) *Effective date of initial entitlement to the full-dollar rate.* The latest of the following:

(1) Date entitlement arose;

(2) Date on which the veteran or survivor first met the residency and citizenship or permanent resident alien status requirements in § 5.613, if VA receives evidence of this within one year of that date; or

(3) Effective date of service connection, provided VA receives evidence that the veteran or survivor meets the residency and citizenship or permanent resident alien status requirements in § 5.613 within one year of the date of notification of the decision establishing service connection.

(b) *Effective date of resumption of the full-dollar rate.* Depending on the reason for reduction to the rate of \$0.50 for each dollar, the effective date for restored eligibility for the full-dollar rate will be:

(1) The date the beneficiary regains his or her U.S. citizenship or lawful permanent resident alien status as required in § 5.613;

(2) The date the veteran or survivor returned to the United States after an absence of more than 60 consecutive days;

(3) The first day of the calendar year following the year in which the veteran

or survivor was absent from the United States for a total of 183 days or more, or the first day after that date that the veteran or survivor returns to the United States;

(4) In the case of resumption of the full-dollar rate under § 5.613(d)(3), the date the requested evidence of continued eligibility is received by VA; or

(5) In the case of resumption of the full-dollar rate under § 5.613(d)(4), the date VA receives evidence of a valid U.S. mailing address.

(c) *When payments at the full-dollar rate will begin after eligibility is restored.* In the case of a veteran or survivor whose eligibility is restored under § 5.613, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date established in paragraph (b) of this section. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again met the requirements.

(Authority: 38 U.S.C. 107; Pub. L. 106-377 App. A, 114 Stat. 1441A-57; and Pub. L. 108-183, 117 Stat. 2657)

§ 5.615 Parents' dependency and indemnity compensation based on certain Philippine service.

(a) *Scope.* This regulation applies to claims for parents' dependency and indemnity compensation based on the following types of service, as described in § 5.610, "Eligibility for VA benefits based on Philippine service."

(1) Service in the Commonwealth Army of the Philippines;

(2) Service as a guerrilla; and

(3) Service as a New Philippine Scout.

(b) *Income limitations.* Dependency and indemnity compensation is not payable to a parent or parents whose annual income exceeds the limitations set forth in 38 U.S.C. 1315(b), (c), or (d). For parents' dependency and indemnity compensation, these income limitations will be at a rate of \$0.50 for each dollar. However, if the beneficiary meets the requirements for the full-dollar rate in § 5.613, then these income limitations will be at the full-dollar rate.

(Authority: 38 U.S.C. 107; Pub. L. 108-183, 117 Stat. 2651)

Cross References: Eligibility requirements and payment rules for parents' DIC. See §§ 5.530 through 5.535.

§ 5.616 Hospitalization in the Philippines.

Hospitalization in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not qualify the deceased for burial benefits based on death while properly hospitalized by VA.

(Authority: 38 U.S.C. 107)

Cross References: Burial benefits. See §§ 5.630 through 5.654.

§ 5.617 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States (U.S.)* means the states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal, actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual had been, and continued to be, lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, on the date of death.

(b) *Eligibility requirements.* VA will pay burial benefits under 38 U.S.C. chapter 23, at the full-dollar rate, based on service described in § 5.610(c) or (d), when an individual who performed such service dies after November 1, 2000, or based on service described in § 5.610(b) when an individual who performed such service dies after December 15, 2003, and was on the date of death:

(1) Residing in the U.S.; and was

(2) Either—

(i) A citizen of the U.S., or

(ii) An alien lawfully admitted for permanent residence in the U.S.; and was

(3) Either—

(i) Receiving compensation under 38 U.S.C. chapter 11; or

(ii) Meeting the disability, income, and net worth requirements of § 5.370, "Eligibility and entitlement requirements for Improved Pension," and would have been eligible for pension if the veteran's service had been deemed to be active military service.

(c) *Evidence of eligibility.* (1)(i)

Evidence establishing that the veteran was residing in the U.S. on the date of death should identify the veteran's name and relevant dates, and may include:

(A) A valid driver's license issued by the state of residence;

(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;

(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;

(D) Hospital or medical records showing medical treatment or hospitalization of the veteran or survivor, and showing the name of the medical facility or treating physician;

(E) Property tax bills and receipts; and

(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

(2) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

(i) A valid U.S. passport;

(ii) A birth certificate showing that he or she was born in the U.S.; or

(iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate.

(3) In a claim for full-dollar rate burial payments based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA, or a valid U.S. passport, will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) In a claim for full-dollar rate burial payments based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(Authority: 38 U.S.C. 107, 501(a))

§ 5.618 Filipino veterans and their survivors: Effective dates of reductions and discontinuances for benefits at the full-dollar rate.

(a) *General rule.* VA will assign an effective date of a reduction or discontinuance of benefits payable to a Filipino veteran or survivor in accordance with 38 CFR 5.705, "General effective dates for reduction or discontinuance of benefits."

(b) *Discontinuance based on the withdrawal of recognition of service.*

When a discontinuance is based on the withdrawal of recognition of service, the discontinuance will be effective the first day of the month that follows the month for which VA last paid benefits.

(c) *Reduction of payments from the full-dollar rate to the half-dollar rate.*

The effective date of discontinuance of the full-dollar rate of payment under § 5.613 "Compensation at the full-dollar rate for certain Filipino veterans or their survivors residing in the United States," and reduction to the \$0.50 rate of payment will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(1) If a veteran or survivor receiving benefits at the full-dollar rate under § 5.613 is physically absent from the U.S. for a total of 183 days or more during any calendar year, VA will reduce compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 183rd day of absence from the U.S.

(2) If a veteran or survivor receiving benefits at the full-dollar rate under § 5.613 is physically absent from the U.S. for more than 60 consecutive days, VA will reduce compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the 61st day of the absence.

(3) If a veteran or survivor receiving benefits at the full-dollar rate under § 5.613 loses either U.S. citizenship or status as an alien lawfully admitted for permanent residence in the U.S., VA will reduce compensation to the rate of \$0.50 for each dollar authorized under the law, effective on the day he or she no longer satisfies one of these criteria.

(4) In the case of a veteran or survivor receiving benefits at the full-dollar rate under § 5.613, if VA requests evidence of verification of continued eligibility under § 5.613, but does not receive such evidence within 60 days of such request, VA will reduce compensation to the rate of \$0.50 for each dollar authorized under the law, effective as provided in § 5.104, "Certifying continuing eligibility to receive benefits."

(5) If mail to a veteran or survivor receiving benefits at the full-dollar rate under § 5.613 is returned to VA by the U.S. Postal Service, VA will make reasonable efforts to determine the correct mailing address. If VA is unable to determine the veteran's or survivor's correct address through reasonable efforts, VA will reduce compensation to the rate of \$0.50 for each dollar authorized under law, effective the first

day of the month that follows the month for which VA last paid benefits.

Cross-Reference: 38 CFR 5.705 “General effective dates for reduction or discontinuance of benefits.”
(Authority: 38 U.S.C. 107)

§§ 5.619—5.629 [Reserved]

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