

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900-AL84

Special and Ancillary Benefits for Veterans, Dependents, 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 regulations concerning special and ancillary benefits for veterans, dependents, and 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.

DATES: Comments must be received by VA on or before May 8, 2007.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (OOREG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AL84—Special and Ancillary Benefits for Veterans, Dependents, and Survivors." 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) 273-9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director of Regulations Management (OOREG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management (ORPM) 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 adds subpart H, which includes proposed rules regarding the special and ancillary benefits for veterans, dependents, and 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, 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 or Survivors of Veterans" would inform readers how VA determines whether an individual is a dependent or a survivor of a veteran. 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,

including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. 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, and 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, 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 is the subject of this document.

“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.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain those 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, 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 H Organization

This NPRM pertains to the VA adjudication rules that concern special and ancillary benefits for veterans, dependents, and survivors. The document addresses the rules that govern special benefits, such as § 3.802 related to Medal of Honor, § 3.801 related to special acts of Congress, and § 3.814 related to children with spina bifida. We will also address the rules that govern ancillary benefits for which veterans with certain service-connected disabilities are eligible. These include the current § 3.808 related to certification for automobiles or other conveyances under 38 U.S.C. 3902; and § 3.810 related to the clothing allowance under 38 U.S.C. 1162. While 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. We specifically note in the NPRM where the substantive changes occur.

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”)
Special Benefits	
5.580(a)–(b)	3.802(a)
(c)(1)–(2)	3.802(b).
5.580(c)(3)	3.802(c).
5.580(c)(4)	3.27(d).
5.580(d)–(e)	3.802(b).
5.581(a)–(b)	3.801(a).
5.581(c)(1)	3.801(c)(2).
5.581(c)(2)	3.801(d).
5.581(d)	3.801(b).
5.581(e)(1)	3.801(e).
5.581(e)(2)	New.
5.581(f)	3.801(c)(1).
5.582	3.803.
5.583	3.804.
5.584	3.805.
5.585	3.806.
5.586(a)	New.
5.586(b)	3.807(c).
5.586(c)	3.807(c).
5.586(d)	3.807(d).
5.587	3.811.
5.588	3.812.
5.589	3.814.
5.590	3.815.
5.591 (introductory paragraph)	New.

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.591(a) (introductory paragraph).	3.814(e) (introductory paragraph), 3.815(i) (introductory paragraph).
5.591(a)(1)	3.403(b).
5.591(a)(2)	3.403(c), 3.815(i) (introductory paragraph).
5.591(a)(3)	3.403(b), (c), 3.815(i).
5.591(a)(4)	3.400(g), 3.814(e)(2), 3.815(i)(2).
5.591(a)(5)	3.400(o)(2), 3.814(e)(1), 3.815(i)(1).
5.591(a)(6)	3.114(a), 3.815(i) (introductory paragraph), 3.403(c).
5.591(b) (introductory paragraph).	3.500(a), 3.814(f), 3.815(j).
5.591(b)(1)	3.500(b)(1), 3.814(f)(1), 3.815(j)(1).
5.591(b)(2)	3.500(b)(2), 3.814(f)(2), 3.815(j)(2).
5.591(b)(3)	3.503(b).
5.591(b)(4)	3.814(f) (introductory paragraph); 3.815(j) (introductory paragraph).

Ancillary Benefits

5.603(a)	New.
5.603(b)(1)	3.808(e).
5.603(b)(2)	New.
5.603(c)(1)	3.808(a), (b), and New.
5.603(c)(2)	3.808(b).
5.603(c)(3)	3.808(c).
5.603(d)(1)	New.
5.603(d)(2)	3.808(d) and 17.158.
5.603(e)	3.808(c) and New.
5.603(f)	New and 17.158.
5.606(a)	New.
5.606(b)(1)	3.810(a) (introductory paragraph), 3.810(a)(1).
5.606(b)(2) (introductory paragraph).	3.810(a)(1), (a)(2).
5.606(b)(2)(i)	3.810(a)(2).
5.606(b)(2)(ii)	3.810(a) (introductory paragraph).
5.606(b)(3)	3.810(a)(1), (a)(2) and New.
5.606(c)	3.810(b).
5.606(d)	3.810(c)(1).
5.606(e)(1)	3.810(c)(2).
5.606(e)(2)	New.
5.606(f)	New.
5.606(g)	New.
5.606(h)	3.810(d).

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 contained in these proposed regulations appear in subparts of part 5 that will be published for public comment at a later time. 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 carried forward to 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 Rules

Special Benefits for Veterans, Dependents, and Survivors

Section 5.580 Medal of Honor Pension

Current § 3.802 and the authorizing statutes, 38 U.S.C. 1560(c), 1561(c), and 1562, use the phrase "special pension" to reference benefits payable under those provisions to Medal of Honor recipients. In order to make this regulation more specific, however, VA proposes to use the phrase "Medal of Honor pension" when referring to benefits paid under proposed § 5.580. Proposed § 5.580 restates in plain language current § 3.802, regarding allocation of responsibilities between the service departments and VA with regard to Medal of Honor pension. Current § 3.802(a) consists of two sentences. The first sentence briefly explains that the Secretaries of the Armed Forces and of the Department of Transportation are responsible for determining whether an applicant has been placed on the Medal of Honor Roll and for delivering to VA a certified copy of the certificate noting that the applicant has been placed on the Medal of Honor Roll and has a right to the Medal of Honor pension. The second sentence states: "The special pension will be authorized on the basis of such certification." The current regulation does not clearly indicate that VA is authorized to pay the pension to a person placed on the Medal of Honor Roll.

We propose to divide current § 3.802(a) into two paragraphs. Proposed § 5.580(a) explains that the service departments are responsible for determining the eligibility of an

applicant to be entered on the Medal of Honor Roll, a determination in which VA has no role. We also propose in § 5.580 to refer to the Department of Homeland Security instead of the Department of Transportation. This change is needed because the United States Coast Guard now falls under the jurisdiction of the Department of Homeland Security. Homeland Security Act of 2002, Public Law 107-296, § 888(b), 116 Stat. 2249. Proposed § 5.580(b) clarifies that it is the responsibility of VA to award the Medal of Honor pension after it receives a certified copy of the certificate. The authorities for proposed § 5.580(a) and (b) are 38 U.S.C. 1560 and 38 U.S.C. 1561.

Proposed § 5.580(c) describes how VA calculates the amount and effective date of the Medal of Honor pension award and the retroactive lump sum payment associated with the pension award. Current § 3.802(b) provides, in part: "An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made as of the date of filing of the application [for placement on the Medal of Honor Roll] with the Secretary concerned." This sentence is split into proposed § 5.580(c)(1) and (c)(2) and restated in plain language.

Proposed § 5.580(c)(3) is a restatement in plain language of current § 3.802(c), with the exception of the last sentence of § 3.802(c). The last sentence states "VA will not make a retroactive lump sum payment under this section before October 1, 2003." We propose not to include this sentence in § 5.580(c) because, due to the passage of time, it no longer serves any useful purpose.

In keeping with our objective to consolidate material concerning the same benefit, we propose to repeat the content of current § 3.27(d) relating to automatic adjustments of Medal of Honor pension in proposed § 5.580(c)(4) without substantive change. We propose to title § 5.580(c)(4) "Automatic annual adjustment."

Proposed § 5.580(d) is based, in part, on current § 3.802(b). The first sentence of proposed § 5.580(d) is derived from the current rule. The second sentence of proposed § 5.580(d) restates 38 U.S.C. 1562(c): "Pensions payable under this section are not subject to any attachment, execution, levy, tax lien, or detention under any process whatever." We propose to add this statement to the regulation in order to emphasize the protections afforded the Medal of Honor pension.

Proposed § 5.580(e) restates the last sentence of current § 3.802(b) which explains that a veteran is entitled to only one Medal of Honor pension even

if the veteran is awarded more than one Medal of Honor.

Section 5.581 Awards of VA Benefits Based on Special Acts or Private Laws

Proposed § 5.581 restates current § 3.801, governing awards of VA benefits based on a special act of Congress, and adds language clarifying the existing rule.

Proposed § 5.581(a) restates the definition of a “special act” from current § 3.801(a), also called a “private law,” as an act of Congress that authorizes VA to pay benefits to a particular person.

Proposed § 5.581(b) clarifies the rule stated in current § 3.801(a) that VA will not award benefits based on a special act until a claimant-beneficiary has filed a formal application. The purpose of this provision is to ensure that VA has all of the necessary information (such as full name, address, military status, etc.), and that the information is current and accurate, in order to properly identify and make payments to the beneficiary.

Proposed § 5.581(c) restates current § 3.801(c)(2) and (d), with clarification. The rule pertains to a special act that modifies the dates of a veteran’s service or the character of a former servicemember’s discharge. We propose to restate current § 3.801(c)(2) in plain language as § 5.581(c)(1).

Current § 3.801(d) provides that a special act that shows a person commenced service in the active military service on a particular date and was honorably discharged on a subsequent date “is sufficient regardless of whether the service department has any record of such service.” In § 5.581(c)(2), we propose to characterize a special act as “conclusive” rather than “sufficient” proof of the period of service described in the special act. For VA purposes, Congress’ act on the matter is conclusive and no further investigation of the veteran’s period of service is authorized.

Proposed § 5.581(d) restates in plain language current § 3.801(b). Paragraph (d) states that VA will pay the benefit in accordance with the rate, effective date, and duration prescribed in a special act. If the special act does not provide for the rate, effective date, or duration of payments, VA will set them consistent with existing public law.

Proposed § 5.581(e) describes two situations where the rate of pension or disability compensation may be changed. Proposed paragraph (e)(1), based on current § 3.801(e), states that the rate of pension may be reduced when a payee is hospitalized. Proposed paragraph (e)(2) states that the rate of pension or disability compensation may

be reduced when a payee is incarcerated. This is a new provision based on section 1505 of Title 38, United States Code, and 38 CFR 3.666, which prohibit the payment of pension under private laws administered by VA to an individual who is imprisoned for more than 60 days in a Federal, State, or local penal institution. It is also based on section 5313 of Title 38, United States Code, and 38 CFR 3.365, which prohibit the payment of VA disability compensation to an individual who is imprisoned for more than 60 days in a Federal, State, or local penal institution. Although section 5313 and 38 CFR 3.365 do not specify that they are applicable to compensation paid under private law, there is no indication that they would apply only to compensation paid under public laws.

Proposed paragraph § 5.581(f) is based on current § 3.801(c)(1), which states that VA will not pay any other pension or disability compensation award other than the award authorized by the special act, unless the payee makes an election or unless the special act expressly authorizes VA to do so. We note that this provision might be problematic if it prohibits payment for a disability other than the disability for which payments are awarded under the special act. For example, if a special act awarded disability compensation for a back injury, VA should not be precluded from paying additional compensation for a different service-connected condition. Therefore, we have amended the provision to state that if VA is authorized to pay pension or disability compensation by a special act, it may not pay any other pension or disability compensation award to the extent that such award would be duplicative under section 5304 of Title 38, United States Code. Thus, the payee will be prevented from receiving more than one award for the same disability, but will not be prevented from receiving an award for a different disability or manifestation of disability. See Subpart L, Payments to Beneficiaries Who Are Eligible for More than One Benefit, §§ 5.740 through 5.769, which will be published in a future NPRM.

Sections 5.582, Naval Pension, 5.583, Special Allowance Under 38 U.S.C. 1312, and 5.584, Loan Guaranty for Surviving Spouses; Certification

We propose to repeat the content of current §§ 3.803 (Naval Pension), 3.804 (Special allowance under 38 U.S.C. 1312), and 3.805 (Loan guaranty for surviving spouses; certification), in §§ 5.582, 5.583, and 5.584, respectively, without making any substantive changes to the text of the rules. We note that

these sections do not have internal paragraph headings to identify the subject matter contained therein. Therefore, we propose to insert paragraph headings where appropriate to aid the reader in locating subject matter and to make these regulations easier to read.

Further, in proposed § 5.582, we inserted the word “disability” before the word “compensation” in each instance to be consistent with other regulations in this NPRM. For the purpose of clarity and to avoid confusion between naval pension and VA pension, we propose not to use the phrase “disability pension,” which appears in current § 3.803(b), in § 5.582. We propose to place the word “VA” before the phrase “pension or disability compensation” in order to distinguish the Department of Defense programs from the VA programs.

Proposed § 5.582(c) is based on current § 3.803(c), which states that new awards of naval pension may not be made concurrently with VA pension or compensation. We note that the meaning of “new” is ambiguous. It is actually referring to awards of naval pension made on or after July 14, 1943. See 38 U.S.C. 5304(a)(1). To make this clear to the reader, we have amended this provision to include this date.

Proposed § 5.583(b)(1) is based on current § 3.804(b)(1), which states that the special allowance under 38 U.S.C. 1312 is not payable where the veteran’s death resulted from VA hospitalization, treatment, examination, or training. The purpose of this provision is to exclude deaths treated “as if” service connected, because such deaths do not meet the criteria of 38 U.S.C. 1312(a)(2). Since § 3.804 was promulgated, however, the criteria of 38 U.S.C. 1151 (authorizing dependency and indemnity compensation for deaths treated “as if” service connected because death was due to VA treatment or vocational rehabilitation) have been expanded, and 38 U.S.C. 1318 (authorizing dependency and indemnity compensation for certain deaths treated “as if” service connected because the veteran was rated totally disabled at time of death) has been enacted. Therefore, current § 3.804(b)(1) has been rewritten in proposed § 5.583(b)(1) to encompass this expanded criteria for deaths that may be treated “as if” service connected. We have included a reference to proposed § 5.510(b)(2) and (3), which address deaths treated “as if” service connected under 38 U.S.C. 1151 and 1318. No substantive change is intended.

Proposed § 5.583(e)(1)(ii) is based on current § 3.804(e)(1)(ii), which states that the special allowance is payable for

death occurring as the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty under conditions other than dishonorable. We note that this provision does not incorporate the 2000 amendment to the statutory definition of "active military, naval, or air service." The amendment included as "active military, naval, or air service" any period of inactive duty training during which the individual concerned was disabled or died from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training. Rather than amend the regulatory provision to include this new language, we have decided to utilize the corresponding statutory language instead, which states simply "as the result of a service-connected disability incurred after September 15, 1940." See 38 U.S.C. 1312(a)(2)(B). The statutory definition of "service-connected" includes the requirement that the disability was incurred or aggravated in the line of duty in the active military, naval, or air service. See 38 U.S.C. 101(16). By using the statutory language in the regulation, it will not be necessary to amend the regulation every time there is an amendment to the statutory definition of "active military, naval, or air service." No substantive change to the regulatory provision is intended. The requirement that the veteran was discharged or released under conditions other than dishonorable, currently found in § 3.804(e)(1)(ii), is contained in proposed § 5.583(e)(2).

In proposed § 5.583(e)(2)(ii), the counterpart to current § 3.804(e)(2)(ii), we have replaced the reference to current § 3.1(m) with proposed § 5.660, which was published in Subpart K on May 31, 2006. See 71 FR 31056. Current § 3.804(e)(2)(ii) also includes a reference to the § 3.300 series. Therefore, we have included references to any published proposed Part 5 counterparts to regulations in the current § 3.300 series. These include §§ 5.661 and 5.662, which are the Part 5 counterparts to §§ 3.301 and 3.302. These were published in Subpart K on May 31, 2006. These also include proposed §§ 5.260 through 5.269, which are the Part 5 counterparts to §§ 3.307 through 3.309, 3.311, 3.316 and 317. These were published in Subpart E on July 27, 2004.

See 69 FR 44614. We have retained the reference to the current § 3.300 series, because the remaining regulations in that series have not yet been published in a Part 5 NPRM.

Section 5.585 Certification for Death Gratuity

We propose to reword the text of current § 3.806 for the sake of clarity. Current paragraph (a) refers to situations where VA makes a certification based on a claim filed with it, and current paragraph (b) refers to situations where VA makes a certification at the request of the Secretary concerned. As VA must go through the same determination criteria in either situation, we propose to combine paragraphs (a) and (b), as there is no need for them to be separate. Current paragraph (c) (which is proposed paragraph (b)) has also been slightly reorganized.

Section 5.586 Certification for Dependents' Educational Assistance (DEA)

Proposed § 5.586 is based on current § 3.807 relating to certification for DEA. We note that the current provisions of § 3.807(a) and (b) are redundant of provisions already contained in § 21.3021. The provisions of § 3.807(a) appear in § 21.3021(a). The provisions of § 3.807(b) appear in § 21.3021(b), with the exception of the sentence stating that service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 8-358). However, due to the passage of time, this date is no longer necessary and no longer needs to be included in this regulation. Further, the requirement that the service-connected disability or death must have been the result of active military, naval, or air service is necessarily implied in the eligibility requirements of § 21.3021(a), that the veteran has or had a service-connected disability. A service-connected disability or death is, by statutory definition, the result of active military, naval, or air service. See 38 U.S.C. 101(16).

Instead of repeating the same criteria already contained in § 21.3021, we propose to simply refer the reader to § 21.3021 for the eligibility criteria. This will prevent possibly conflicting substantive provisions, and will prevent the necessity of amending two regulations for the same provision. We have also added a brief description of DEA.

Proposed § 5.586(b) is based on the second sentence of § 3.807(c), which indicates that the standards and criteria for determining service connection,

either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated.

Proposed § 5.586(c)(1) is based on the first sentence of § 3.807(c), which states that a disability treated as if service connected under § 3.383(a) (paired organs and extremities) is included for purposes of determining eligibility for DEA. Proposed § 5.586(c)(2) is based on the third sentence of § 3.807(c), which states that a disability treated as if service connected under §§ 3.358, 3.361, or 3.800 (disability or death due to hospitalization or vocational rehabilitation) is not included for purposes of determining eligibility for DEA.

Proposed § 5.586(d) is based on current § 3.807(d), containing the definitions of child, spouse, and surviving spouse for purposes of determining eligibility for DEA. Paragraph (d)(1), pertaining to the definition of "child," remains essentially unchanged, since the definition is particular to eligibility for DEA. In paragraph (d)(2), we propose to add that a spouse means a person of the opposite sex. Currently, (d)(2) merely refers the reader to the appropriate regulation, § 3.50 (proposed § 5.190), for that definition. The reader is still referred to the appropriate regulation (old § 3.1(j); proposed § 5.190) for the requirements of a valid marriage. Paragraph (d)(3) is reworded but contains no substantive change.

Sections 5.587, Minimum Income Annuity and Gratuitous Annuity, and 5.588, Special Allowance Payable Under Section 156 of Public Law 97-377

We propose to repeat the content of current §§ 3.811 and 3.812 in §§ 5.587 and 5.588 without making any substantive changes to the text of these rules. We note that current § 3.811 is without internal paragraph headings in certain places to properly identify the subject matter. Therefore, we propose to insert paragraph headings in proposed § 5.587(b)(2)-(d) as appropriate guideposts to aid the reader in locating subject matter and to make the regulation easier to read. For the purpose of consistency in usage between the various NPRMs, we propose to substitute the terms "discontinue" and "discontinuance" in place of "terminate" and "termination" in §§ 5.587(e) and 5.588.

Sections 5.589, Monetary Allowance for Vietnam Veterans' Children Born With Spina Bifida, and 5.590, Monetary Allowance for Female Vietnam Veterans' Children With Certain Birth Defects

We propose to revise the titles of current §§ 3.814 and 3.815, respectively. We propose to revise the title of current § 3.814 (proposed § 5.589) to read, "Monetary allowance for Vietnam veterans' children born with spina bifida." We believe that this title more accurately and completely represents the content of the rule. For the same reason, we propose to amend the title of current § 3.815 (proposed § 5.590), to read, "Monetary allowance for female Vietnam veterans' children with certain birth defects." The proposed titles make the regulations easier to locate and identify in part 5.

We note that the second sentence of § 3.814(a), which indicates that a recipient of a monetary allowance under chapter 18 is not prevented from receiving other VA benefits, is substantively the same provision as found in § 3.815(b), which uses slightly different language. We think the provisions in each regulation should use the same language, however, because they are both based on the same statute, 38 U.S.C. 1823. Therefore, in proposed § 5.589, we have added paragraph (b), which is identical to the paragraph found in current § 3.185(b) and proposed § 5.590(b). For this reason, the second sentence of § 3.814(a) is not carried over to proposed § 5.589.

Current §§ 3.814 and 3.815 use the phrase "active military, naval, or air service" to refer to qualifying service for benefits under those regulations. VA has previously proposed, with regard to the regulations relating to service requirements for veterans, to use the term "active military service" in lieu of the longer term "active military, naval, or air service" in 38 U.S.C. 101(24) and current part 3. 69 FR 4820, 4822 (2004). In order to maintain consistency, we propose to use the same phrase in these regulations pertaining to special and ancillary benefits. Note that, as an equivalent to the longer "active military, naval, or air service," "active military service" is a broader term than "active duty." Compare 38 U.S.C. 101(21) with 38 U.S.C. 101(24).

Neither the authorizing statutes nor the current regulations concerning these monetary allowances define "service in the Republic of Vietnam". To promote consistency among VA adjudications and because we believe it reflects Congressional intent in enacting Chapter 18, we propose to cross

reference our proposed definition of the phrase as it applies to veterans seeking a presumption of exposure to herbicides, contained in § 5.262(a)(1). See 69 FR 44614, July 27, 2004.

We propose to move the effective date provisions of these rules, §§ 3.814(e) and (f) and 3.815(i) and (j), to a new regulation, § 5.591.

Section 5.591 Effective Dates of Awards for Certain Disabled Children of Vietnam Veterans

Pursuant to 38 U.S.C. 1805(a), VA is required to pay "a monthly allowance * * * to any child of a Vietnam veteran for any disability resulting from spina bifida suffered by such child." Current §§ 3.403(b) and 3.814 implement 38 U.S.C. 1805. Similarly, VA is required by 38 U.S.C. 1815(a) to pay "a monthly allowance to any eligible child for any disability resulting from the covered birth defects of that child." The term "eligible child" is defined in 38 U.S.C. 1811 as a child of a "woman Vietnam veteran" who "was born with one or more covered birth defects." Current §§ 3.403(c) and 3.815 implement 38 U.S.C. 1815.

The effective date of awards (and discontinuances or reductions of awards) of the monthly allowances described above are governed by 38 U.S.C. 1832, which incorporates the provisions of 38 U.S.C. 5110(a), (b)(2), (g), and (i); and 5112(a) and (b)(1), (6), (9), and (10). Currently, the effective date rules that implement these statutory provisions are found in several part 3 regulations. The effective date rules for awards based on spina bifida under current § 3.814 appear in current §§ 3.814(e) and (f), 3.403(b), and 3.503(b). The effective date rules for awards based on birth defects under current § 3.815 appear in current §§ 3.815(i) and (j), 3.403(c), and 3.503(b). Much of the language in these rules is repetitive and can be simplified. We propose to reduce the repetition and increase the clarity in these rules by consolidating the effective date provisions located in current §§ 3.814 and 3.815 with the provisions located in current §§ 3.403 and 3.503, resulting in one comprehensive rule. We propose § 5.591 as that new comprehensive rule.

The introductory paragraph of proposed § 5.591 outlines the scope of the proposed rule. Proposed § 5.591(a) provides the general rule for determining the effective date of an award for the monetary allowances governed by the proposed rule. It restates content from current §§ 3.403(b) and (c), 3.814(e), and 3.815(i), all of which restate the general rule articulated in 38 U.S.C. 5110(a). The

general effective date statute, section 5110(a), is applicable to monthly allowances set forth in current §§ 3.814 and 3.815, pursuant to 38 U.S.C. 1832(b)(2).

Proposed § 5.591(a)(1) and (a)(2) each limit the effective date of a monetary allowance to no earlier than the effective dates of 38 U.S.C. 1805 and 1815. This limitation is required by 38 U.S.C. 5110(g), which states that the effective date of an award or increase in benefits pursuant to an Act or administrative issue "shall not be earlier than the effective date of the Act or administrative issue." Subsection (g) of section 5110 is made applicable to these monetary awards by 38 U.S.C. 1832(b)(2).

Proposed § 5.591(a)(3) restates material currently found in § 3.403(b) and (c) and § 3.815(i), which is that the effective date of a monetary allowance will be the child's date of birth if the claim is received within a year of the birth date.

Proposed § 5.591(a)(4) states that VA will apply the rule in § 3.400(g), which governs effective dates in cases where entitlement is established because of the correction of military records. This rule is applicable under 38 U.S.C. 1832(b)(2) and 5110(i). Currently, the rule is restated in §§ 3.814(e)(2) and 3.815(i)(2). We propose to simply refer the reader to the actual rule, § 3.400(g), instead of restating it.

Proposed § 5.591(a)(5) states that in a claim for increase of a monetary allowance, VA will apply the rule in § 3.400(o)(2), pertaining to the effective date of an increase of compensation due to an increase in disability. This rule is applicable pursuant to U.S.C. 5110(b)(2) and 1832(b)(2). Currently, §§ 3.814(e)(1) and 3.815(i)(1) restate the rule. We propose to simply refer the reader to the actual rule, § 3.400(o)(2), instead of restating it.

Proposed § 5.591(a)(6) states that VA will apply the rule in § 3.114(a), pertaining to a change of law or VA issue. Proposed § 5.591(a)(6) incorporates the reference to § 3.114(a) which appears in current §§ 3.403(c) and 3.815(i). The statutory authority for current § 3.114(a) is 38 U.S.C. 5110(g) and 1832(b)(2).

Proposed § 5.591(b) governs reductions and discontinuances of the monetary allowances. Pursuant to 38 U.S.C. 1832, the provisions of 38 U.S.C. 5112(a) and 5112(b)(1), (6), (9), and (10), governing effective dates of reductions and discontinuances, are applicable.

Currently, §§ 3.814(f) and 3.815(j) restate 38 U.S.C. 5112(a), which provides that the effective date of a reduction or discontinuance of certain

awards will be fixed according to the facts found, except as otherwise provided. This is implemented by current § 3.500(a). We have included a reference to § 3.500(a) in proposed § 5.591(b).

Proposed § 5.591(b)(1) and (b)(2) applies the rules regarding the reduction or discontinuance of erroneous awards based on beneficiary or administrative error, located in current § 3.500(b)(1) and (2). Currently, paragraphs (1) and (2) of § 3.814(f) and paragraphs (1) and (2) of § 3.815(j) repeat the language in paragraphs (1) and (2) of § 3.500(b). We propose to simply incorporate those rules by reference to reduce repetitiveness.

Proposed § 5.591(b)(3) governs the effective date of a discontinuance based on the beneficiary's death, and restates current § 3.503(b), which states that the last day of the month before the month in which a child's death occurs serves as the effective date of discontinuance. The statutory authority for this rule is 38 U.S.C. 5112(b)(1), which is made applicable to these benefits through 38 U.S.C. 1832(b)(4).

Proposed § 5.591(b)(4) restates the two cross references contained in the introductory paragraphs of current §§ 3.814(f) and 3.815(j). The current rules cross-reference current § 3.114(b), Discontinuance of Benefits based on a Change of Law or VA Issue.

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

Section 5.603 Financial Assistance To Purchase a Vehicle and Adaptive Equipment

Section 3902 of title 38, U.S.C., authorizes VA to assist certain veterans and servicemembers in acquiring a vehicle and adaptive equipment for a vehicle. Such assistance is available to claimants who have incurred certain disabilities as the result of injury sustained or disease contracted in or aggravated by active military service. See 38 U.S.C. 3901(1)(A). VA's implementing regulations for 38 U.S.C. 3902 are currently codified at § 3.808. It is our intent to rewrite the provisions currently in § 3.808 in plain language to improve readability. As proposed, we have changed the title of this section to "Financial assistance to purchase a vehicle and adaptive equipment" to better reflect the purpose of the regulation.

Proposed § 5.603(a) simply states in plain language the general nature of the benefit involved in this section.

Proposed § 5.603(b) provides definitions of applicable terms, namely "adaptive equipment" and "vehicle." No substantive change from current § 3.808 has been made to either term. We propose to include in § 5.603(b) the types of adaptive equipment to which an eligible person may be entitled under this section. We propose to use the term "vehicle" in lieu of "automobile or other conveyance" to make the regulation easier to read.

Proposed § 5.603(c) identifies the criteria that a claimant must satisfy to obtain a certification of eligibility for the purchase of a vehicle and adaptive equipment. This is a plain language rewrite of current § 3.808 criteria, and there is no change to the substantive provisions.

Proposed § 5.603(d), which is based on 38 CFR 17.158 and current VA practice, specifies certain limitations for eligibility for financial assistance to purchase a vehicle and/or adaptive equipment. It also states the limitations on how often an eligible person may take advantage of these benefits for the purchase of a vehicle and adaptive equipment, and states that payments may not be made for the repair, maintenance, or replacement of a vehicle, but payments may be made for the repair, replacement, or reinstallation of adaptive equipment.

We note that current § 3.808(d), which is entitled "additional eligibility criteria for adaptive equipment," states that claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.156, 17.157, and 17.158 of this chapter. We have not included this provision in proposed § 5.603 because the part 17 provisions do not state additional "eligibility criteria." Rather, they state additional details regarding the assistance VA may provide. However, we have added a reference to those part 17 provisions in proposed § 5.603(d)(2).

Proposed § 5.603(e) is based partly on current § 3.808(c). We have also added a few details regarding the procedure of certification. These provisions reflect current VA practice; no substantive changes are intended.

Proposed § 5.603(f) is based on 38 CFR 17.158 and current VA practice; no substantive change is intended.

Section 5.606 Clothing Allowance

Proposed § 5.606 is derived from current § 3.810 but is written in plain language to clarify certain provisions and to improve readability. We have reorganized the information in a logical format, addressing basic eligibility and applications, examinations, payments, and reduction for incarceration. We

have also included rules for Filipino veterans and veterans living abroad to ensure that all affected persons have the information necessary to file an annual clothing allowance claim.

Proposed § 5.606(a) states generally the nature of the regulation. It does not add any substantive material to the regulation, but is merely intended to familiarize the reader with the nature of the regulation.

Proposed § 5.606(b), based on current § 3.810(a), states the eligibility requirements for receiving benefits under this section. It is reorganized and rewritten in plain English. No substantive change from current § 3.810(a) is intended, except for the reference to § 3.326(c). The reference to § 3.326(c) is in current § 3.810(a)(1), which states that one of the eligibility criteria is a VA examination or hospital or examination report from a facility specified in § 3.326(c) which discloses that the veteran wears or uses certain prosthetic or orthopedic appliances (including a wheelchair) which tend to wear or tear clothing because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350(a), (b), (c), (d), or (f). The reference to § 3.326(c) is not completely correct. Current § 3.326(c) states:

"Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination." This provision does not refer to a "facility," as current § 3.810(a)(1) might suggest. Rather, current § 3.326(b) is the appropriate provision regarding reports from private facilities. Current § 3.326(b) states in pertinent part: "Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination." Both paragraph (b) and paragraph (c) of current § 3.326 are appropriate references, and therefore we have adjusted the reference to include both (b) and (c) of current § 3.326, which have been published as proposed § 5.91(a). See 70 FR 24680.

We note that we have not carried forward the provision in current § 3.810(a)(2) which states that VA's Chief Medical Director or designee will make the certification of eligibility. This provision addresses an internal administrative procedure within VA and does not need to be included in the regulation. Instead we have stated the provision in more general terms by indicating that VA will make the determination whether the service-

connected disability tends to wear out or tear the veteran's clothing or whether the prescribed medication causes irreparable damage to the veteran's outergarments. This is consistent with the language of the authorizing statute, 38 U.S.C. 1162, which indicates that such determinations are made by the Secretary. We have used the term "VA" instead of "Secretary," which is consistent with the meaning of the statute. It is understood that an employee of VA will make the actual determination on behalf of the Secretary, and therefore "VA" is a more appropriate term. Using more general language ("VA" instead of "Chief Medical Director") in the proposed regulation removes the necessity of amending the regulation every time there is a change in VA procedure.

Proposed § 5.606(c) is a new provision based on current VA practice. It describes the criteria required for continuing entitlement to the clothing allowance. If a veteran has continuing entitlement to the clothing allowance, the veteran is not required to reapply for the clothing allowance each year.

Proposed § 5.606(d), regarding the annual payment period and anniversary date, is based on current § 3.810(b). The first sentence of current § 3.810(b) states that effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. The August 1, 1972, date is the date that the clothing allowance was first effective. The first sentence of current § 3.810(b) means that if a veteran met the eligibility requirements for the clothing allowance as of August 1, 1972, the clothing allowance was due and payable as of August 1, 1972. Due to the passage of time, this date and this sentence are no longer necessary, and they have not been carried forward to proposed § 5.606.

The second sentence of current § 3.810(b) states that subsequent annual payments for those meeting the eligibility requirements of paragraph (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement. The phrase "subsequent annual payments" means payments after August 1, 1972. The "anniversary date" means August 1 of each year after 1972. The sentence merely establishes that the clothing allowance is due to eligible veterans on August 1 of each year. The August 1 date applies to initial claims for the clothing allowance, and for automatically recurring payments.

Proposed § 5.606(d) is a plain language rewrite of current § 3.810(b). We believe that the proposed language is clearer than the current version. In essence, current § 3.810(b) relies on a reference to the original August 1, 1972, effective date of the clothing allowance statute in order to explain that the clothing allowance is due on August 1 of each year. A simpler way of saying this is to state that the clothing allowance is paid annually following each 12-month period which begins August 1 and ends July 31. In addition, we have explained that the August 1 date is referred to as the anniversary date. It is helpful to keep the "anniversary date" terminology in order to easily explain the effective date provisions in proposed § 5.606(e). We have also added a definition of "initial anniversary date," which is a phrase used in proposed § 5.606(e). No substantive change from the current regulation is intended.

Proposed § 5.606(e), regarding the time for filing a claim for the clothing allowance, is based on current § 3.810(c). It is rewritten in plain English. In addition, examples have been added in order to more clearly illustrate the meaning of these provisions. No substantive change from the current regulation is intended.

Proposed § 5.606(f) and (g) discuss clothing allowance claims for Filipino veterans and veterans living abroad. These two rules reflect current VA practice. The appropriate VA medical center prosthetic and sensory aids service will process the annual clothing allowance payment for those claims under the jurisdiction of the VA medical center assigned the geographical area where the veteran maintains a permanent address. Claims filed by Filipino veterans not permanently residing in the U.S. are processed locally in Manila, Philippines. Claims authorized for veterans of the U.S. Army and Old Philippine Scouts are paid in dollars. Claims authorized for New Philippine Scouts, Commonwealth Army of the Philippines, and guerilla service, are paid at a rate in Philippine pesos equivalent to \$.50 for each dollar authorized under the law. See § 3.42 (proposed § 5.613).

Proposed § 5.606(h) restates current § 3.810(d) pertaining to reduction of the amount of the clothing allowance when a veteran is incarcerated for a period in excess of 60 days and is furnished clothing without charge by the penal institution. This regulation implements 38 U.S.C. 5313A. We propose to include a notation that the reduction applies to incarceration for any reason. We believe this brings focus to the controlling issue

of whether the veteran is being furnished clothing without charge during incarceration, and not the reason for the veteran's incarceration. The statutory language of 38 U.S.C. 5313A does not contain a requirement that a veteran be convicted of a felony for the reduction to occur. Proposed § 5.606(h) clarifies that the reduction applies to all veterans who are incarcerated for more than 60 days and are furnished clothing without charge, without regard to the nature of the crime for which the veteran was convicted.

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 in 38 CFR 5.603 and 5.606 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 these proposed rules. The information collection requirements for §§ 5.603 and 5.606 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0067, 2900–0188, and 2900–0198.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments 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. Although these proposed amendments affect some small entities, specifically auto dealerships, the proposed amendments do not substantively change the current regulation (38 CFR 3.808) concerning auto dealerships. The current regulation does not have a significant economic impact on auto dealerships. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment are 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.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing 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 in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and title 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; 64.110, 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, Health care, Pensions, Veterans, Vietnam.

Approved: November 30, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on March 5, 2007.

For the reasons set forth in the preamble, VA proposes to further amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart H to read as follows:

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

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

Special Benefits for Veterans, Dependents, and Survivors

Sec.

- 5.580 Medal of Honor pension.
- 5.581 Awards of VA benefits based on special acts or private laws.
- 5.582 Naval pension.
- 5.583 Special allowance under 38 U.S.C. 1312.
- 5.584 Loan guaranty for surviving spouses; certification.
- 5.585 Certification for death gratuity.
- 5.586 Certification for dependents' educational assistance (DEA).
- 5.587 Minimum income annuity and gratuitous annuity.
- 5.588 Special allowance payable under section 156 of Public Law 97-377.
- 5.589 Monetary allowance for Vietnam veterans' children born with spina bifida.
- 5.590 Monetary allowance for female Vietnam veterans' children with certain birth defects.
- 5.591 Effective dates of awards for certain disabled children of Vietnam veterans.
- 5.592-5.599 [Reserved]

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

- 5.600-5.602 [Reserved]
- 5.603 Financial assistance to purchase a vehicle and adaptive equipment.
- 5.604-5.605 [Reserved]
- 5.606 Clothing allowance.
- 5.607-5.609 [Reserved]

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

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

Special Benefits for Veterans, Dependents, and Survivors

§ 5.580 Medal of Honor pension.

(a) *Placement on the Medal of Honor Roll.* The Secretaries of the Departments

of the Army, Navy, Air Force, and Homeland Security determine entitlement to placement on the Medal of Honor Roll and issue certificates setting forth the right to receive Medal of Honor pension. After a person has been placed on the Medal of Honor Roll, and if such person has indicated a desire to receive the Medal of Honor pension, the Secretary concerned will provide VA with a certified copy of the certificate setting forth such person's right to the Medal of Honor pension.

(b) *Award of Medal of Honor pension by VA.* Medal of Honor pension will be awarded by VA once the certification under paragraph (a) of this section is provided to VA.

(c) *Amount of the Medal of Honor pension, the effective date of the pension, and entitlement to a retroactive lump-sum payment.* VA will pay a Medal of Honor pension and a retroactive lump-sum payment, as follows:

(1) *Effective date.* The effective date for payment of a Medal of Honor pension is the date the service department concerned received the person's application for placement on the Medal of Honor Roll.

(2) *Monthly rate.* VA will pay a Medal of Honor pension at the rate specified in 38 U.S.C. 1562, as adjusted under paragraph (c)(4) of this section.

(3) *Retroactive lump-sum payment.* VA will pay to each person who is receiving or who in the future receives a Medal of Honor pension, a retroactive lump sum payment for the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor, and ending on the last day of the month preceding the month in which the pension commenced under paragraph (c)(1) of this section. The lump sum payment will be based on the monthly Medal of Honor pension rates in effect during the period for which the lump sum payment is made.

(4) *Automatic annual adjustment.* VA will, effective December 1 of each year, increase the monthly Medal of Honor pension by the same percentage by which benefit amounts payable under Title II of the Social Security Act are increased effective December 1 of that year.

(d) *Medal of Honor pension exempt from offset, attachment, or other legal process.* The Medal of Honor pension is paid in addition to all other payments under laws of the United States. It is not subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(e) *Only one Medal of Honor pension is allowed.* VA will pay a person only

one Medal of Honor pension under this section, even if the person is awarded more than one Medal of Honor.

(Authority: 38 U.S.C. 1560, 1561, 1562)

§ 5.581 Awards of VA benefits based on special acts or private laws.

(a) *Special act* means an act of Congress that authorizes VA to pay benefits to a particular person. Special acts are also known as private laws.

(b) *Formal application must be filed.* VA will award benefits based on a special act only to an individual who files a formal application based on the special act, unless the individual:

(1) Is currently receiving VA benefits;

or
(2) Has a pending formal application in the form prescribed by VA (a claim that has not been granted or finally denied by VA).

(c) *Special acts relating to military service*—(1) *Change to character of discharge.* If a special act changes the character of a former servicemember's discharge from military service so as to establish the former servicemember's status as a veteran, but the special act does not establish the former servicemember's entitlement to VA pension or disability compensation, the former servicemember will satisfy the discharge requirement for purposes of establishing status as a veteran and may apply for and be awarded VA benefits if otherwise eligible.

(2) *Special act as conclusive proof of service.* For VA purposes, a special act that states a veteran served on a particular date or dates and was discharged under conditions other than dishonorable on a particular date is conclusive proof of such service.

(d) *Rate, effective date, and duration of benefit.* (1) VA will apply and will not change, except as provided in paragraph (e) of this section, the rate, effective date, and discontinuance date that is specified in a special act.

(2) When a special act does not provide the rate, effective date, or discontinuance date, VA will award or continue the benefit consistent with applicable public laws.

(e) *Changes in rates*—(1) *Hospitalization.* VA will reduce pension payable under a special act pursuant to § 3.551 of this chapter (reduction of payments based on hospitalization), unless the special act expressly prohibits such reduction.

(2) *Incarceration.* VA will reduce disability compensation and pension payable under a special act pursuant to §§ 3.365 and 3.666 of this chapter (reduction of payments during incarceration), unless the special act expressly prohibits such reduction.

(f) *Prohibition against duplicate awards.* When pension or disability compensation is authorized by a special act, VA will not pay any other pension or disability compensation to the extent such awards would be duplicative under section 5304 of title 38, United States Code, unless the payee makes an election (see § 3.700 of this chapter), or unless the special act expressly authorizes VA to do so.

(Authority: 38 U.S.C. 501(a), 1505, 5313, 5503)

§ 5.582 Naval pension.

(a) *Certification.* VA will pay naval pension if the Secretary of the Navy certifies that the person is entitled to the pension.

(Authority: 10 U.S.C. 6160)

(b) *Concurrent receipt of awards in effect prior to July 14, 1943.* Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with VA pension or disability compensation; however, naval pension allowance under 10 U.S.C. 6160 may not exceed one-fourth of the rate of VA pension or disability compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.

(c) *No concurrent receipt of awards initially made on or after July 14, 1943.* Naval pension initially awarded on or after July 14, 1943, may not be paid concurrently with VA pension or disability compensation.

(Authority: 38 U.S.C. 5304(a))

(d) *Naval pension not payable as accrued benefit.* Naval pension remaining unpaid at the date of the veteran's death is not payable by VA as an accrued benefit.

(Authority: 10 U.S.C. 1414; 38 U.S.C. 5304)

§ 5.583 Special allowance under 38 U.S.C. 1312.

(a) *Allowance payable.* The provisions of this section are applicable to the payment of a special allowance by VA to the surviving dependents of a veteran who served after September 15, 1940, and who died after December 31, 1956, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.

(b) *Allowance not payable.* The special allowance is not payable:

(1) Where the veteran's death is not service connected but is treated "as if" it were service connected under the provisions of this chapter. See § 5.510(b)(2) and (3) of this chapter;

(2) Where the veteran's death was due to service rendered with the

Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the New Philippine Scouts under section 14, Public Law 190, 79th Congress.

(c) *Claims for special allowance.* A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is payable or where a specific inquiry concerning entitlement to the special allowance is received.

(d) *Certification by the Social Security Administration.* Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifications from the Social Security Administration.

(e) *Special allowance payable on death.* (1) The special allowance will be payable only if the death occurred:

(i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or

(ii) As the result of a service-connected disability incurred after September 15, 1940.

(2) Where the veteran died after separation from service:

(i) Discharge from service must have been under conditions other than dishonorable as outlined in § 5.30.

(ii) Line of duty and service connection will be determined as outlined in §§ 3.1(k), 3.1(m), §§ 3.300 through 3.344, §§ 5.260 through 5.269, and §§ 5.660 through 5.662.

(Authority: 38 U.S.C. 1312)

§ 5.584 Loan guaranty for surviving spouses; certification.

A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed after December 31, 1958, if:

(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time after September 15, 1940; and

(b) The veteran died in service; or

(c) The veteran died after separation from service and such separation was under conditions other than dishonorable, provided the veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty rendered after September 15, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of

death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The surviving spouse meets the requirements of the term "surviving spouse" as outlined in § 5.200(a); and

(e) The veteran's surviving spouse is unmarried or was remarried after age 57; and

(f) The applicant is not an eligible veteran.

§ 5.585 Certification for death gratuity.

(a) *Certification by VA to the Secretary concerned.* If VA determines either on the basis of a claim for VA benefits filed with it or at the request of the Secretary concerned, that a death occurred under the following circumstances, VA will certify that fact to the Secretary concerned:

(1) The veteran died after December 31, 1956;

(2) The veteran died during the 120-day period that began on the day following the day of his or her discharge or release from duty as described in 10 U.S.C. 1476;

(3) Death resulted from disease or injury incurred or aggravated while on such duty, or travel to or from such duty; and

(4) The deceased person was discharged or released from such service under conditions other than dishonorable.

(b) *VA law applies.* The standards, criteria, and procedures for determining the incurrence or aggravation of a disease or injury under paragraph (a) of this section are those applicable under disability and death compensation laws administered by VA, except that there is no requirement under this section that any incurrence or aggravation have been in the line of duty.

(Authority: 10 U.S.C. 1476, 38 U.S.C. 1323)

§ 5.586 Certification for dependents' educational assistance (DEA).

(a) *Eligibility for DEA.* DEA is an education benefit which VA is authorized to provide for certain classes, licenses, or certifications. See § 21.3020 through 21.3344 of this chapter. In addition to paragraphs (b) through (d) of this section, the provisions of § 21.3021 of this chapter will be applied in a determination of eligibility for DEA.

(b) *Service connection.* The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 3501(a)).

(c) *Disabilities treated as if service connected—(1) Paired organs or extremities.* For purposes of eligibility

for DEA, a "service-connected disability" includes a disability treated as if service-connected under the provisions of § 3.383(a) of this chapter (paired organs and extremities).

(2) *Disability due to hospitalization, etc.* For purposes of eligibility for DEA, a "service-connected disability" does not include a disability treated as if service connected under §§ 3.358, 3.361, or 3.800 of this chapter (disability or death due to hospitalization, etc.).

(d) *Relationship—(1) Child.* For the purposes of this section, the term "child" means a veteran's child who meets the requirements of § 5.220, except as to age and marital status.

(Authority: 38 U.S.C. 3501(a)(2))

(2) *Spouse.* For VA purposes, a "spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements for a valid marriage under § 5.191.

(3) *Surviving spouse.* For VA purposes, a "surviving spouse" is a person who meets the requirements of § 5.200.

(Authority: 1 U.S.C. 7; 38 U.S.C. 101(3), 103(c))

§ 5.587 Minimum income annuity and gratuitous annuity.

(a) *Eligibility for minimum income annuity.* The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Homeland Security has determined meets the eligibility criteria of section 4(a) of Public Law 92-425 as amended other than section 4(a)(2) and (3); and

(2) Who is eligible for pension under subchapter III of 38 U.S.C. chapter 15, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment—(1) Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this chapter for beneficiaries receiving Improved Pension, or under §§ 5.472 through 5.474 of this part for beneficiaries receiving Old Law or Section 306 Pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) *Determining rate of annuity for persons entitled to Improved Pension.*

VA will determine the minimum income annuity payment for beneficiaries entitled to Improved Pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) *Determining rate of annuity for persons entitled to Old Law and Section 306 Pensions.* VA will determine the minimum income annuity payment for beneficiaries receiving Old Law and Section 306 Pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) *Recomputation.* VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.

(c) *Exception as to the requirement of pension eligibility.* An individual otherwise eligible for pension under subchapter III of 38 U.S.C. chapter 15, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) *Concurrent receipt of gratuitous annuity under Public Law 100-456.* If the Department of Defense or the Department of Homeland Security determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Public Law 100-456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.

(e) *Discontinuance.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will discontinue the minimum income annuity effective the same date.

(Authority: Sec. 4, Pub. L. 92-425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))

§ 5.588 Special allowance payable under section 156 of Public Law 97-377.

The provisions of this section apply to the payment of a special allowance to certain surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or who died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. This special allowance is a replacement for certain social security benefits which were either reduced or discontinued by provisions of the Omnibus Budget Reconciliation Act of 1981.

(a) *Eligibility requirements.* (1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

(2) Once a favorable determination has been made under paragraph (a)(1) of this section, determinations as to the age, relationship and school attendance requirements contained in paragraphs (a)(1) and (b)(1) of section 156 of Public Law 97-377 will be made. In making these eligibility determinations VA shall apply the provisions of the Social Security Act, and any regulations promulgated pursuant thereto, as in effect during the claimant's period of eligibility. Unless otherwise provided in this section, when issues are raised concerning eligibility or entitlement to this special allowance which cannot be appropriately resolved under the provisions of the Social Security Act, or the regulations promulgated pursuant thereto, the provisions of title 38, Code of Federal Regulations, are applicable.

(b) *Computation of payment rate—(1) Basic entitlement rate.* A basic entitlement rate will be computed for each eligible claimant in accordance with the provisions of subparagraphs (a)(2) and (b)(2) of section 156 of Public Law 97-377 using data to be provided by the Social Security Administration. This basic entitlement rate will then be used to compute the monthly payment rate as described in paragraphs (b)(2) to (b)(6) of this section.

(2) *Original or reopened awards to surviving spouses.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each

legislative increase in dependency and indemnity compensation rates under 38 U.S.C. 1311 which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(3) *Original and reopened awards to children.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) *Subsequent legislative increases in rates.* The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 3531(b).

(5) *Amendment of awards.* Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) *Rounding of monthly rates.* Any monthly rate computed under the provisions of this paragraph (b), if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) *Claimants not entitled to this special allowance.* The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The New Philippine Scouts under section 14, Public Law 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

(d) *Appellate jurisdiction.* VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) *Claims—formal and informal.* Formal claims for this special allowance must be filed on a form prescribed by the Secretary of Veterans Affairs. When informal claims or inquiries as to eligibility are received, the appropriate application form shall be provided. In such cases, the date of receipt of the informal claim or inquiry will be accepted as the date of claim for this special allowance if a formal claim on the prescribed form is received within 1 year from that date.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, the effective date for an award of benefits begins on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

(Authority: Sec. 156, Pub. L. 97-377, 96 Stat. 1830, 1920 (1982))

§ 5.589 Monetary allowance for Vietnam veterans' children born with spina bifida.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of

any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions*—(1) *Vietnam veteran*. For the purposes of this section, the term "Vietnam veteran" means a person who performed active military service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. For the definition of "service in the Republic of Vietnam," see § 5.262(a)(1).

(2) *Individual*. For the purposes of this section, the term "individual" means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 5.180(b), VA will require the types of evidence specified in §§ 5.221 and 5.229 sufficient to establish in the judgment of the Secretary that a person is the biological son or daughter of a Vietnam veteran.

(3) *Spina bifida*. For the purposes of this section, the term "spina bifida" means any form and manifestation of spina bifida except spina bifida occulta.

(d) *Disability evaluations*. (1) Except as otherwise specified in this paragraph (d), VA will determine the level of payment as follows:

(i) *Level I*. The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairment of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

(ii) *Level II*. Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual: walks with braces or other external support as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires medication or other means to control the effects of urinary bladder impairment and no more than two times per week is unable to remain dry for at least 3 hours at a time during waking hours; or, requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require wearing of

absorbent materials at least 4 days a week; or, has a colostomy that does not require wearing a bag.

(iii) *Level III*. The individual uses a wheelchair as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for 3 hours at a time during waking hours; or, despite bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage severe or frequent enough to require wearing of absorbent materials at least 4 days a week; or, regularly requires manual evacuation or digital stimulation to empty the bowel; or, has a colostomy that requires wearing a bag.

(2) If an individual who would otherwise be paid at Level I or II has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida, or from treatment procedures for spina bifida, the Director of the Compensation and Pension Service may increase the monthly payment to the level that, in his or her judgment, best represents the extent to which the disabilities resulting from spina bifida limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home. A Level II or Level III payment will be awarded depending on whether the effects of a disability are of equivalent severity to the effects specified under Level II or Level III.

(3) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided the statements or reports are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section. In the absence of adequate medical information, VA will schedule an examination for the purpose of assessing the level of disability.

(4) VA will pay an individual eligible for a monetary allowance due to spina bifida at Level I unless or until it receives medical evidence supporting a higher payment. When required to reassess the level of disability under paragraph (d)(5) or (d)(6) of this section, VA will pay an individual eligible for this monetary allowance at Level I in the absence of evidence adequate to support a higher level of disability or if

the individual fails to report, without good cause, for a scheduled examination. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc.

(5) VA will pay individuals under the age of 1 year at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the individual from ambulating, grasping a pen, feeding himself or herself, performing self care, or from achieving urinary or fecal continence. If any of those deficits are present, VA will pay the individual at Level III. In either case, VA will reassess the level of disability when the individual reaches the age of 1 year.

(6) VA will reassess the level of payment whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it must reassess the level of payment at least every 5 years.

(e) *Effective dates*. See § 5.591.

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101)

§ 5.590 Monetary allowance for female Vietnam veterans' children with certain birth defects.

(a) *Monthly monetary allowance*. (1) *General*. VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era*. No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 5.589, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 5.589(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III, or IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions—(1) Vietnam veteran.* For the purposes of this section, the term "Vietnam veteran" means a person who performed active military service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. For the definition of "service in the Republic of Vietnam," see § 5.262(a)(1).

(2) *Individual.* For the purposes of this section, the term "individual" means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 5.180(b), VA will require the types of evidence specified in §§ 5.221 and 5.229 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section, the term "covered birth defect" means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and

ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term "covered birth defect" does not include a condition due to a:

- (i) Familial disorder;
- (ii) Birth-related injury; or
- (iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph (d) are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

- (i) Achondroplasia;
- (ii) Cleft lip and cleft palate;
- (iii) Congenital heart disease;
- (iv) Congenital talipes equinovarus (clubfoot);
- (v) Esophageal and intestinal atresia;
- (vi) Hallerman-Streiff syndrome;
- (vii) Hip dysplasia;
- (viii) Hirschprung's disease (congenital megacolon);
- (ix) Hydrocephalus due to aqueductal stenosis;
- (x) Hypospadias;
- (xi) Imperforate anus;
- (xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);

- (xiii) Poland syndrome;
- (xiv) Pyloric stenosis;
- (xv) Syndactyly (fused digits);
- (xvi) Tracheoesophageal fistula;
- (xvii) Undescended testicle; and
- (xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

- (i) Albinism;
- (ii) Alpha-antitrypsin deficiency;
- (iii) Crouzon syndrome;
- (iv) Cystic fibrosis;
- (v) Duchenne's muscular dystrophy;
- (vi) Galactosemia;
- (vii) Hemophilia;
- (viii) Huntington's disease;
- (ix) Hurler syndrome;
- (x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
- (xi) Marfan syndrome;
- (xii) Neurofibromatosis;
- (xiii) Osteogenesis imperfecta;
- (xiv) Pectus excavatum;
- (xv) Phenylketonuria;
- (xvi) Sickle cell disease;
- (xvii) Tay-Sachs disease;
- (xviii) Thalassemia; and
- (xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered

birth defects. These include, but are not limited to, the following:

- (i) Medulloblastoma;
- (ii) Neuroblastoma;
- (iii) Retinoblastoma;
- (iv) Teratoma; and
- (v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

- (i) Down syndrome and other Trisomies;
- (ii) Fragile X syndrome;
- (iii) Klinefelter's syndrome; and
- (iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

- (i) Brain damage due to anoxia during or around time of birth;
- (ii) Cerebral palsy due to birth trauma;
- (iii) Facial nerve palsy or other peripheral nerve injury;
- (iv) Fractured clavicle; and
- (v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

- (i) Asthma and other allergies;
- (ii) Effects of maternal infection during pregnancy, including maternal rubella, toxoplasmosis, or syphilis;
- (iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
- (iv) Hyaline membrane disease;
- (v) Maternal-infant blood incompatibility;
- (vi) Neonatal infections;
- (vii) Neonatal jaundice;
- (viii) Post-infancy deafness/hearing impairment (onset after the age of 1 year);
- (ix) Prematurity; and
- (x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

- (i) Attention deficit disorder;
- (ii) Autism;
- (iii) Epilepsy diagnosed after infancy (after the age of 1 year);
- (iv) Learning disorders; and
- (v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

- (i) Conditions rendered non-disabling through treatment;

(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;

(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;

(iv) Hemangiomas that have resolved with or without treatment; and

(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph (e) that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability*—(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that

frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);

(ii) Manual dexterity;

(iii) Stamina;

(iv) Speech;

(v) Hearing;

(vi) Vision (other than correctable refraction errors);

(vii) Memory;

(viii) Ability to concentrate;

(ix) Appropriateness of behavior; and

(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule

examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* See § 5.591.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101)

§ 5.591 Effective dates of awards for certain disabled children of Vietnam veterans.

This section provides the effective date for an award, reduction, or discontinuance of the monthly monetary allowance payable under § 5.589 to a Vietnam veteran's biological child who is suffering from spina bifida or under § 5.590 of this part to a woman Vietnam veteran's biological child who suffers from one or more covered birth defects.

(a) *Effective date of award.* Except as otherwise provided in this paragraph, an award of a monetary allowance based on an original claim, a claim reopened after final denial, or a claim for increase will be effective the date VA received the claim or the date entitlement arose, whichever is later.

(1) An allowance payable under § 5.589 will not be effective before October 1, 1997.

(2) An allowance payable under § 5.590 will not be effective before December 1, 2001.

(3) Subject to paragraphs (a)(1) and (2) of this section, the effective date will be the child's date of birth, if VA received the claim within 1 year of the birth date.

(4) Subject to paragraphs (a)(1) and (2) of this section, if a previously denied claim is reopened and granted based on corrected military records, VA will apply the rule in § 3.400(g) of this chapter.

(5) Subject to paragraphs (a)(1) and (2) of this section, if a claimant files a claim for increase of a monetary allowance due to increase in disability, VA will

apply the rule in § 3.400(o)(2) of this chapter.

(6) If the allowance is based on a change of law or VA issue, VA will apply the rule in § 3.114(a) of this chapter.

(b) *Effective dates of reductions or discontinuances.* Except as otherwise provided in this paragraph, the effective date of a reduction or discontinuance of a monetary allowance shall be fixed in accordance with § 3.500(a) of this chapter.

(1) If the monetary allowance was paid erroneously because of beneficiary error, VA will apply the rule in § 3.500(b)(1) of this chapter.

(2) If the monetary allowance was paid erroneously because of administrative error by VA, VA will apply the rule in § 3.500(b)(2) of this chapter.

(3) If a discontinuance is due to the beneficiary's death, VA will discontinue benefits effective the first day of the month of the beneficiary's death.

(4) If there is a change of law or VA issue, or change in interpretation of a law or VA issue, VA will apply the rule in § 3.114 of this chapter.

(5) If a reduction or discontinuance is warranted by a change in the beneficiary's physical condition, VA will apply the rule in § 3.105(g) of this chapter.

(Authority: 38 U.S.C. 1805, 1832, 5110, 5112)

§§ 5.592–5.599 [Reserved]

Ancillary Benefits for Certain Service-Connected Veterans and Certain Members of the Armed Forces Serving on Active Duty

§§ 5.600–5.602 [Reserved]

§ 5.603 Financial assistance to purchase a vehicle and adaptive equipment.

(a) *General.* Certain persons with qualifying disabilities will be certified as eligible for financial assistance to purchase a vehicle and necessary adaptive equipment.

(b) *Definition of terms.* The following definitions apply to this section.

(1) *Adaptive equipment.* (i) "Adaptive equipment" means equipment manufactured for sale to the general public and added to a vehicle to:

(A) Make it safe for use by the eligible person, and

(B) Assist the eligible person in meeting applicable standards of licensure by the proper licensing authority.

(ii) Adaptive equipment includes:

(A) Automatic transmission as to an eligible person who has lost or lost the use of a limb

(B) Power steering, power brakes, power window lifts, and power seats

(C) Air conditioning equipment, if such equipment is necessary for the health and safety of the eligible person and to the safety of others

(D) Special equipment necessary to assist the eligible person in and out of the vehicle, regardless of whether the vehicle is to be operated by the eligible person or is to be operated for such person by another person

(E) Modification of the interior space if necessary for the eligible person to enter or operate the vehicle.

(F) Items the Under Secretary for Health or designee has deemed to be ordinarily necessary for a qualifying disability or combination of qualifying disabilities, or has deemed necessary in an individual case. Such specifications of equipment may include a limit on the financial assistance to be provided based on judgment and experience.

(2) *Vehicle* means an automobile, van, truck, jeep, tractor, golf cart, or other conveyance.

(c) *Eligibility criteria.* The claimant must meet all of the requirements of this paragraph (c).

(1) *Persons eligible.* The claimant must be:

(i) A veteran who is entitled to compensation under 38 U.S.C. chapter 11, including compensation under 38 U.S.C. 1151, for a qualifying disability described in paragraph (c)(2) of this section; or

(ii) A member of the Armed Forces serving on active duty who has a qualifying disability described in paragraph (c)(2) of this section that is the result of an injury incurred or disease contracted in or aggravated by active military service.

(2) *Qualifying disabilities.* The claimant must have one of the following disabilities:

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20° in the better eye.

(iv) For the purpose of eligibility for adaptive equipment only, ankylosis of one or both knees or one or both hips.

(3) *Claim for financial assistance to purchase a vehicle and/or adaptive equipment.* (i) The claimant must file an application form for financial assistance to purchase a vehicle or adaptive equipment, which includes a

certification by the claimant that the vehicle will be operated only by persons properly licensed.

(ii) A claim for financial assistance to purchase a vehicle will also be considered a claim for adaptive equipment necessary to operate the vehicle according to the safety standards of the licensing authority.

(iii) There is no time limit in which the claimant must apply for the benefits under this section.

(iv) For claimants applying while still on active military duty, the application form will be deemed filed with VA on the date it is shown to be in possession of military authorities for transmittal to VA.

(d) *Limitations on assistance—(1) Financial assistance for vehicles.* An eligible person is not entitled to benefits for the purchase of more than one vehicle under the provisions of this section. No payments may be made for the repair, maintenance, or replacement of the vehicle.

(2) *Financial assistance for adaptive equipment.* An eligible person is not entitled to adaptive equipment for more than two vehicles in a 4-year period unless one of the adapted vehicles is no longer available. Payments may be made for the repair, replacement, or reinstallation of adaptive equipment deemed necessary by the Under Secretary for Health or designee. See §§ 17.156 through 17.158 for additional limitations on assistance for adaptive equipment.

(e) *VA certification process for financial assistance to purchase a vehicle and/or adaptive equipment.* If a claim for financial assistance to purchase a vehicle or adaptive equipment is approved, VA will issue a certificate of eligibility to the claimant.

(f) *Eligible person's redemption of certificate of eligibility.* The eligible person must give the certificate of eligibility to the seller of the vehicle and/or adaptive equipment. The seller will send the purchase receipt certificate of eligibility to VA finance for reimbursement for the purchase price, or the statutory limit set in 38 U.S.C. 3902(a), whichever is less.

(Authority: 38 U.S.C. 3901, 3902, 3903)

§§ 5.604–5.605 [Reserved]

§ 5.606 Clothing allowance.

(a) *General.* Certain veterans with a qualifying disability will be certified eligible for a clothing allowance.

(b) *Eligibility criteria.* The claimant must meet all of the requirements of this paragraph (b).

(1) *Disabled veteran.* The claimant must be a veteran with a service-

connected disability, or a veteran with a disability compensable under 38 U.S.C. 1151.

(2) *Qualifying disability.* A qualifying disability must be shown by VA examination, or hospital or examination report from a facility specified in § 5.91(a).

(i) Due to the disability described in paragraph (b)(1) of this section, the veteran wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which VA determines tends to wear out or tear the veteran's clothing; or

(ii) The veteran uses prescription medication for a skin condition which is due to the disability described in paragraph (b)(1) of this section, and VA determines that the prescribed medication causes irreparable damage to the veteran's outer garments.

(3) *Application form for clothing allowance.* The veteran must file an application form for an annual clothing allowance. Except as provided in paragraph (c) of this section, the veteran must reapply for the clothing allowance each year.

(c) *Continuing entitlement.* VA will find that the veteran has continuing entitlement to the annual clothing allowance without the need to reapply each year if the following circumstances are met:

(1) Service connection has been established for the loss or loss of use of a hand or foot and the disability requires use of a prosthetic or orthopedic appliance that wears or tears clothing; or

(2) VA makes a finding that the disability for which the annual clothing allowance was awarded is static in nature and that future reevaluations of eligibility are unnecessary.

(d) *Annual payment period and anniversary date.* The clothing allowance will be paid annually following each 12-month period beginning August 1 and ending July 31. The "anniversary date" for any 12-month period is the August 1 following that 12-month period. The "initial anniversary date" is the August 1 that follows the date when entitlement is initially established. A veteran is entitled to a clothing allowance payment for the 12-month period during which the entitlement is initially established.

(e) *Time limits for application.* (1) If a veteran meets the requirements of

paragraphs (b)(1) and (b)(2) of this section as of August 1 (known as the "anniversary date") of a calendar year, the veteran is eligible to receive the annual clothing allowance for that year if he or she submits a timely application form. An application form is timely if it is received within 1 year of the veteran's anniversary date (unless the veteran receives notice of his or her eligibility subsequent to an anniversary date for which entitlement is established, in which case paragraph (e)(2) of this section applies). For example, if VA issues a decision on April 1, 2005 that establishes service connection for a qualifying disability effective February 1, 2005, the veteran is entitled to the 2005 clothing allowance if the veteran files an application form for the clothing allowance within 1 year of August 1, 2005 (the initial anniversary date).

(2) If an initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application form for clothing allowance may be filed within 1 year from the date of notice to the veteran of such determination. For example, if VA issues a decision on December 1, 2005, that establishes service connection for a qualifying disability effective May 1, 2005, the veteran is eligible for the 2005 clothing allowance if he or she files an application form within 1 year of the date he or she received notice of the December 1, 2005, decision.

(3) If the veteran does not file the application form within 1 year of the initial anniversary date or the date specified in paragraph (e)(2), the veteran will be entitled to payment of the clothing allowance for any following year for which entitlement is established, if the veteran files an application form within 1 year of the anniversary date for that year. For example, if VA issues a decision on April 1, 2005, that establishes service connection for a qualifying disability effective February 1, 2005, and the veteran does not file within 1 year of August 1, 2005 (his initial anniversary date), then he or she is not entitled to the 2005 clothing allowance. However, the veteran may be entitled to payment for any following year. For example, the veteran would be entitled to the 2006 clothing allowance if he or she files an

application form within 1 year of the August 1, 2006 anniversary date.

(4) If a veteran first meets the requirements of paragraphs (b)(1) and (b)(2) of this section after August 1 of a calendar year, the veteran is not eligible for that year's clothing allowance. The veteran may receive the clothing allowance for any subsequent year by submitting an application within 1 year of the anniversary date (August 1) of that subsequent year.

(f) *Filipino veterans.* Annual clothing allowance claims for Filipino veterans not permanently residing in the U.S. are processed locally in Manila, Philippines. Claims authorized for such veterans of the U.S. Army or Old Philippine Scouts are paid in dollars. Claims authorized for such veterans of the New Philippine Scouts, Commonwealth Army of the Philippines, or guerrilla service, are paid in Philippine pesos equivalent to \$0.50 for each dollar authorized under the law.

(Authority: 38 U.S.C. 107, 1162)

Cross-References: Eligibility based on service in Philippine and Insular Forces. See § 5.610. Compensation at the full-dollar rate for certain Filipino veterans residing in the United States. See § 5.614.

(g) *Other veterans living abroad.* The appropriate VA medical center will process the annual clothing allowance payment for those claims under its jurisdiction based on the geographical area where the veteran maintains a permanent address.

(h) *Reduction for incarceration.* Eligible veterans who are incarcerated for any reason for a period of more than 60 days in a Federal, State, or local penal institution and who are provided clothing without charge by the institution will not receive the full clothing allowance payment. The amount stated in 38 U.S.C. 1162 will be reduced by 1/365th of that amount for each day over 60 days that the veteran was incarcerated during the 12-month eligibility period beginning August 1 and ending July 31. No reduction will be made for the initial 60 days of a period of incarceration.

(Authority: 38 U.S.C. 5313A)

§ 5.607–5.609 [Reserved]

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