

(iv) 2013: The 2012 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2011 to October 2012;

(v) 2014: The 2013 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2012 to October 2013.

(2) *Viewing in commercial establishments.* The rates applicable to Satellite Carriers' carriage of each broadcast signal for viewing in commercial establishments shall be as follows:

(i) 2010: 50 cents per subscriber per month (for each month of 2010);

(ii) 2011: The 2010 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2009 to October 2010;

(iii) 2012: The 2011 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2010 to October 2011;

(iv) 2013: The 2012 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items for October 2011 to October 2012;

(v) 2014: The 2013 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2012 to October 2013.

Dated: August 26, 2010.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

RIN 2900-AN14

#### Deceased Indebted Servicemembers and Veterans: Authority Concerning Certain Indebtedness

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends Department of Veterans Affairs (VA) regulations to implement certain statutory provisions that grant limited authority to the Secretary of Veterans Affairs to terminate collection action on certain debts arising from a VA benefit program when the indebted individual is a member of the Armed Forces or a veteran who dies as a result of injury

incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001, and to refund amounts collected after the individual's death. This document also implements statutory provisions that grant the Secretary discretionary authority to suspend or terminate collection of debts owed to VA by individuals who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy, and to refund amounts collected after the individual's death.

**DATES:** *Effective Date:* September 30, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** On June 30, 2008, Congress enacted the Combat Veterans Debt Elimination Act of 2008, Public Law 110-252, of which section 1303 amended chapter 53 of title 38, United States Code, to add a new section (38 U.S.C. 5302A) to grant limited authority to the Secretary of Veterans Affairs to terminate collection action on certain debts arising from an individual's indebtedness from a VA benefit program.

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

Section 1303 of Public Law 110-252 also states that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected on or after

September 11, 2001, but before the date of Public Law 110-252, enacted on June 30, 2008, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time, and the individual is equitably entitled to such a refund.

On October 10, 2008, Congress enacted the Veterans' Benefits Improvement Act of 2008, Public Law 110-389, of which section 801 amended 31 U.S.C. 3711(f) to grant limited authority to the Secretary to suspend or terminate action by the Secretary to collect a claim against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy. The Secretary must determine that, under circumstances applicable with respect to the deceased person, it is appropriate to do so. Section 801 of Public Law 110-389 also grants the Secretary the authority to refund to the estate of the deceased member any amount collected by the Secretary from a member who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so, whether collected before, on, or after October 10, 2008.

In a document published in the **Federal Register** on August 7, 2009, VA published the proposed rule associated with this document, *see* 74 FR 39589, which would implement the provisions of 38 U.S.C. 5302A and 31 U.S.C. 3711(f). In that document, we proposed to add 38 CFR 1.945 to implement the Secretary's limited authority to suspend or terminate collection action on certain debts arising from an individual's indebtedness from a VA benefit program. Under proposed § 1.945, the individual must either be a person who died while serving on active duty after September 11, 2001, as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy or the individual must be a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations, as determined by the Secretary in consultation with the Secretary of Defense, in a war or in combat against a hostile force during a period of hostilities after September 11, 2001.

We proposed that this authority would be exercised in the Secretary's discretion when determined to be in the best interest of the United States. The Secretary's authority under proposed § 1.945 would not apply to any amounts owed the United States under any program carried out under the authority of 38 U.S.C. chapter 37 relating to housing and small business loans. The proposed rule also stated that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time and the individual is equitably entitled to such a refund and only if the Secretary determines that the deceased individual is equitably entitled to the refund. The Secretary would also be authorized to refund to the estate of a deceased individual who died while serving on active duty as a member of the Armed Forces any amount collected by the Secretary from that member if the Secretary determines that, under the circumstances applicable with respect to the deceased member, it is appropriate to do so.

We provided a 60-day comment period, which ended on October 6, 2009. We received two comments during this period.

The first commenter expressed concern about "placing emphasis on the date of death" of the service member and suggested that we broaden the scope of the regulation to include those who died in the line of duty prior to September 11, 2001. The commenter stated, "any person that has voluntarily put themselves in the position to protect our country and its citizens should be extended this benefit regardless of a date of death."

In enacting Public Law 110–252, Congress limited the scope of 38 U.S.C. 5302A to those members of the Armed Forces and veterans who died on or after September 11, 2001. Public Law 110–389, applies to a person who died while serving on active duty and explains that the Secretary may refund to the estate of such person any amount previously collected on a VA claim regardless of whether such collection was before, on, or after the date of enactment of that law. Further, in enacting Public Law 110–389, Congress limited the scope of 31 U.S.C. 3711(f) to members of the Armed Forces who die on active duty. This law provides the Secretary with discretionary authority to suspend or terminate collection action and to refund amounts previously

collected. Based upon this authority granted by Congress, we limited refunds to the estate or next-of-kin of servicemembers or veterans who served on active duty on or after September 11, 2001. We believe that this ensures consistency and we will not make any changes to this rulemaking based upon this comment.

The second commenter had several suggestions for expanding the scope of the rule including the following: (1) Providing specific language to include deaths related to post-traumatic stress disorder (PTSD) where the death of the veteran occurred well after combat; (2) distributing any refunds directly to the person responsible for the payment of the debt, rather than automatically distributing it to the deceased's estate or next-of-kin; (3) developing a system to minimize or eliminate debt-related contact with the decedent's family; (4) engaging the public and families directly to let them know a refund may be possible and to provide information on how to maneuver the process of obtaining a refund; and (5) expanding such debt relief to all debt, not just debt owed to VA. We will not make any changes to this rulemaking based upon these suggestions.

Regarding the request that we include specific language concerning PTSD-related deaths, the language of 38 U.S.C. 5302A authorizes the Secretary to terminate collection action on debts owed by a member of the Armed Forces or a veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations after September 11, 2001. The type of relief proposed by the commenter is beyond the authority of that statute because PTSD is considered a disease and not an injury. We note, however, that the language of 31 U.S.C. 3711(f)(3) does not contain the same limitation; rather the Secretary may suspend or terminate collection of a debt of any person who dies while serving on active duty if under the circumstances it would be appropriate to do so. Therefore, the type of relief proposed by the commenter for deaths associated with diseases while serving on active duty may be appropriate under 31 U.S.C. 3711(f)(3). The final rule in § 1.945(a) provides the Secretary may suspend or terminate collection under this statute for any person who dies on active duty when the Secretary determines such action is appropriate and in the best interest of the United States. We made no changes to the final rule based on this comment.

The second commenter also suggested that the distribution of any refunds go directly to the person responsible for

payment of the debt, rather than automatic distribution to the deceased's estate or next-of-kin. VA's authority under title 38, United States Code, is generally limited to providing benefits for veterans and their survivors.

Refunds are for the express purpose of providing relief to the families of certain indebted servicemembers or veterans. We believe that Congress intended that VA, in appropriate cases, would refund previously collected funds first to the decedent's estate and, if there is no estate, then to the decedent's surviving family members in the same order that VA pays accrued benefits to survivors under 38 U.S.C. 5121(a)(2). Therefore, this final rule implements our interpretation of Congressional intent with respect to the distribution of refunds. VA will refund previously collected funds to the decedent's estate or, absent an estate, to the decedent's next-of-kin in the following order: the decedent's spouse, the decedent's children (in equal shares), or the decedent's parents (in equal shares).

Next, the commenter asked whether a system could be developed to minimize or eliminate debt-related contact with the decedent's family. In doing so, the commenter suggested that the decedent's family should be notified of any termination or suspension of collection action, or the refund of any collected debt at the same time as they are notified by the Department of Defense (DoD) of the decedent's death. We do not believe that this suggestion can be implemented, primarily because DoD's goal is to provide the service member's family with the notification of death as quickly as possible. The VA process to determine whether the debt should be suspended or terminated or a refund issued, while done quickly, might not be completed prior to DoD providing notification of death to the next-of-kin. In addition, DoD has no authority to make a determination concerning the collection, termination, and suspension of debts owed to VA or the refund of any collected debt. It is the sole authority of VA to make the determination for collection action on all cases arising from a VA benefit program.

The commenter also suggested that VA engage the public and families directly to let them know a refund may be possible and to provide information on how to maneuver the process of obtaining a refund. As authorized by sections 5302A and 3711(f), VA will limit refunds to the estates of deceased service members or veterans or their next-of-kin to ensure consistency in the refund of money. The next-of-kin will not need to initiate a request for a

refund. The refunds will be processed automatically within VA and submitted to the Secretary for approval.

Finally, the commenter expressed his belief that all debt, not just debt owed to VA, should be forgiven for those who qualify under this final rule.

Unfortunately, while we understand the commenter's concerns, our rulemaking authority is limited by sections 5302A and 3711(f) to cancellation of collection actions pertaining to debts owed to VA.

We note that section 1303 of Public Law 110–252 states that the law shall apply to those who died “on or after” September 11, 2001. However, 38 U.S.C. 5302A(b) authorizes the Secretary to take action regarding certain debts of individuals who die “after September 11, 2001.” The plain language of Public Law 110–252 clearly indicates that Congress intended to include the debts of those who died on September 11, 2001. Moreover, a public law provision generally prevails over a United States Code provision when there is an inconsistency. *See Stephan v. United States*, 319 U.S. 423, 426 (1943) (U.S. Code “cannot prevail over the Statutes at Large when the two are inconsistent”); *Patten v. United States*, 116 F.3d 1029, 1034 n. 3 (4th Cir. 1997) (legislation enacted as a section of a public law and signed by the President had the force of law even though it was not codified). In light of the plain language of section 1303 and Congress' intent to liberalize the law regarding debts owed by individuals who die in combat or as a result of injuries incurred in combat, this final rule implements the public law provision and authorizes the Secretary to take action regarding indebted individuals who die on or after September 11, 2001.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the provisions of the proposed rule as a final rule with one change as noted above.

#### Paperwork Reduction Act

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

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant

regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as any regulatory action this 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 final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Regulatory Flexibility Act

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

#### Unfunded Mandates

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

#### Catalog of Federal Domestic Assistance Program

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

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the

Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on August 25, 2010 for publication.

#### List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Archives and records, Cemeteries, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Dated: August 26, 2010.

#### Robert C. McFetridge,

Director, Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA amends 38 CFR part 1 as follows:

#### PART 1—GENERAL PROVISIONS

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

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

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

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

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

#### § 1.940 Scope and application.

Except as otherwise provided in § 1.945:

\* \* \* \* \*

■ 4. Add § 1.945 to read as follows:

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

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

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary,

other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an *individual* is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001.

(c) For purposes of this section:

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

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

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

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

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

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

(1) The decedent's spouse.

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

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

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

(g) Requests for a determination to suspend or terminate collection action and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans' Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans' Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

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

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

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AN54

#### Diseases Associated With Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases based upon the most recent National Academy of Sciences (NAS) Institute of Medicine committee report, Veterans and Agent Orange: Update 2008 (Update 2008). This amendment is necessary to implement the decision of the Secretary of Veterans Affairs that there is a positive association between exposure to certain herbicides and the subsequent development of hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease, and ischemic heart disease. The effect of this amendment is to establish presumptive service connection for these diseases based on herbicide exposure.

**DATES: Effective Date:** This final rule is effective August 31, 2010. This final rule is a major rule and the implementation of this rule is subject to the provisions of the Congressional Review Act (CRA). The CRA provides for a 60-day waiting period before an agency may implement a major rule to allow Congress the opportunity to review the regulation. The impact of the CRA will require at least a 60-day delay between the issuance of the final regulation and when VA can begin paying benefits.

**Applicability Date:** This final rule shall apply to claims received by VA on or after the date of publication of the final rule in the **Federal Register** and to claims pending before VA on that date. Additionally, VA will apply this rule in readjudicating certain previously denied claims as required by court orders in *Nehmer v. Department of Veterans Affairs*, No. CV-86-6161 TEH (N.D. Cal.) (*Nehmer*).

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Kniffen, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9725 (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On March 25, 2010, VA published in the **Federal Register** (75 FR 14391) a proposal to amend 38 CFR 3.309 to add hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease and ischemic heart disease to the list of diseases subject to presumptive service connection based on herbicide exposure. Interested persons were invited to submit written comments on or before April 26, 2010. VA received 670 comments on the proposed rule. Overall, the comments VA received are