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DEPARTMENT OF VETERANS AFFAIRS

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38 CFR Part 9

RIN 2900-AO74

Servicemembers' Group Life Insurance - Veterans' Group Life Insurance Regulation Update – ABO, VGLI Application, SGLI 2-Year Disability Extension

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) insurance regulations concerning Servicemembers' Group Life Insurance (SGLI) to reflect the statutory provisions of the Veterans' Benefits Act of 2010, which became law on October 13, 2010, and resulted in the need for amendments to change the SGLI Disability Extension period from 1 year to 2 years in duration; provide SGLI Traumatic Injury Protection (TSGLI) retroactive coverage effective from October 7, 2001, for all qualifying injuries regardless of the geographic location and military operation in which the injuries were incurred; and remove the SGLI and Veterans' Group Life Insurance (VGLI) Accelerated Benefits Option (ABO) discount rate. This rule also clarifies that "initial premium" refers to "initial Veterans' Group Life Insurance premium," updates the current address of the Office of Servicemembers' Group Life Insurance (OSGLI), managed by Prudential Insurance Company of America, to reflect where the ABO application is mailed for processing, and corrects the OSGLI phone number. Finally, this rule removes the ABO application form from the regulation, and it corrects and

clarifies language concerning the VGLI application period that was inadvertently incorrectly modified in a prior amendment of the regulations.

DATES: Effective Date: This rule is effective [insert date of publication in the FEDERAL REGISTER].

Applicability Dates: In accordance with the statutory provisions, the applicability dates for the amendments in this final rule are as follows: Under Public Law 111-275, the amendments to 38 CFR 9.2 and 9.5 regarding the SGLI 2-year disability extension are applicable for servicemembers discharged on or after June 15, 2005; amendments to 38 CFR 9.14 regarding the ABO discount are applicable for payments made on or after October 13, 2010; and the amendments to 38 CFR 9.20 regarding retroactive TSGLI benefits are applicable for claims submitted on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory C. Hosmer, Senior Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842-2000, ext 4280. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Title IV of the Veterans' Benefits Act of 2010, Pub. L. 111-275, 124 Stat. 2864, 2879 (the Act), enacted on October 13, 2010, contains several provisions that directly affect the payment of and eligibility for certain SGLI related benefits. Therefore, VA is amending its regulations to reflect those statutory changes. VA is also making technical amendments to clarify, in current § 9.2(b)(2), that

“initial premium” refers to “initial Veterans’ Group Life Insurance premium,” to correct and clarify language concerning the VGLI application period, to update an address and phone number, and to remove a VA form.

38 CFR 9.2 and 9.5

Section 402 of the Act amended 38 U.S.C. 1968(a) by extending the duration of the SGLI disability extension period to 2 years from the date of an insured servicemember’s separation or release from duty. Prior to enactment of the Act, the 2-year disability extension period was set to expire on September 30, 2011, thereafter reducing the length of the SGLI disability extension to 18 months for servicemembers discharged from duty on or after October 1, 2011. This final rule amends the first sentence of 38 CFR 9.2(b)(2) by deleting the term “1-year period” and replacing it with the term “2-year period” to reflect current law. This rule also amends the last sentence of 38 CFR 9.2(b)(2) to clarify that a servicemember insured under the SGLI disability extension has 1 year following “termination of SGLI coverage” to apply for VGLI coverage and not 1 year from the “termination of duty” as the last sentence of § 9.2(b)(2) currently reads. Under § 9.2(b)(2), for any servicemembers who are unemployable due to being totally disabled at the time of their discharge from service or release from assignment with eligibility for the SGLI disability extension, their VGLI coverage eligibility period begins the day following the end of the SGLI 2-year disability extension period or the day following the end of the total disability, whichever is earlier. The current language came about as a result of a prior regulatory submission that incorrectly substituted the word “duty” for the phrase “SGLI coverage” at the end of the

last sentence of § 9.2(b)(2). In addition, in the last sentence of § 9.2(b)(2), we clarify that the “initial premium” referred to is the initial VGLI premium.

This rule also amends 38 CFR 9.5(d) to change the language that states “1 year” following termination of duty to “2 years” following termination of duty to reflect the fact that the SGLI disability extension period referenced in this paragraph is now 2 years in duration.

38 CFR 9.14

Title 38, United States Code, section 1980, provides for the payment of an ABO under the SGLI and VGLI programs. ABO is a provision of the SGLI and VGLI programs that allows payment to a terminally ill insured, in the amount requested by the insured, up to 50 percent of his or her insurance coverage. Formerly, 38 U.S.C. 1980(b)(1) required that all ABO payments be reduced by an interest deduction, which is the amount that has been actuarially determined to be the amount of interest lost due to the early payment of the insurance proceeds. Section 405 of the Act eliminated the interest reduction for ABO payments. VA is amending the implementing regulation, 38 CFR 9.14(e), to reflect that change. The phrase “minus the interest reduction” and all references to the ABO interest rate reduction are being deleted wherever they appear in 38 CFR 9.14(e).

We are also amending 38 CFR 9.14 by deleting the reproduction of the ABO claim form from the text of 38 CFR 9.14(f)(2). As a matter of policy, VA no longer includes forms in its regulations. This is because routine minor changes are often made to forms independent of the rulemaking process. Requiring the use of the rulemaking

process to make minor, non-substantive changes to widely distributed forms is costly in money, time, and the delivery of benefits and serves no useful purpose. Furthermore, the most recent version of any required insurance form can be found on the VA Insurance website (www.insurance.va.gov). The words “entitled ‘Claim for Accelerated Benefits’” are being removed from § 9.14(f) as the current ABO claim form title is different and may be subject to change in the future.

Finally, 38 CFR 9.14(f) is being amended to show that the current address for the Office of Servicemembers’ Group Life Insurance is 80 Livingston Avenue, Roseland, New Jersey 07068-1733, and the correct phone number for the office is 1-800-419-1473.

38 CFR 9.20

In 2005, Congress extended traumatic injury protection under 38 U.S.C. 1980A to any member who experienced a traumatic injury, as defined in section 1980A(b)(1), between October 7, 2001, and December 1, 2005, “if the qualifying loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom.” Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Sec. 1032, Pub. L. 109-13, 119 Stat. 259-260 (2005).

In 2006, Congress provided a retroactive period of eligibility for traumatic injury protection for a member of the uniformed services who sustained a traumatic injury during the period beginning on October 7, 2001, and ending at the close of November 30, 2005, “if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom

or Operation Iraqi Freedom.” Veterans’ Housing Opportunity and Benefits Improvement Act of 2006, Sec. 501(b), Pub. L. 109-233, 120 Stat. 411 (2006).

In 2010, Congress amended section 1980A note to delete the phrase “if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom.” Sec. 408, Pub. L. 111-275. Section 408 of the Act, therefore, expanded the class of individuals who are eligible for retroactive TSGLI benefits to include all servicemembers of the uniformed services who have incurred a qualifying injury on or after October 7, 2001. Prior to Public Law 111-275, retroactive TSGLI benefits were payable for traumatic injury incurred between October 7, 2001 through November 30, 2005, only if the traumatic injury occurred in certain theaters of operation or while serving under orders in support of certain military operations, namely Operation Enduring Freedom and/or Operation Iraqi Freedom, which is no longer applicable. VA is amending 38 CFR 9.20(b)(1)-(3) and (d)(1) to accurately reflect the statutory language.

Administrative Procedure Act

Changes made by this final rule merely reflect current statutory provisions and miscellaneous technical amendments. Therefore, in accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concludes that there is good cause to dispense with public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. The regulatory changes made by this rule pursuant to the Act reflect changes in statute that VA is adopting,

without change, into VA's regulations. The regulatory changes do not involve interpretation of any statutory provision. The remaining changes are technical and non-substantive. Consequently, opportunity for public comment is unnecessary. Due to the above considerations, VA is issuing this rule as a final rule, effective immediately upon publication.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines 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 this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

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. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the final regulatory flexibility analysis requirements of section 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 one year. This final rule will have no such effect on State, local, and tribal governments or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Signing Authority

The Acting 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. Jose D. Riojas, Chief of Staff, approved this document on July 24, 2014 for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: July 25, 2014.

Janet J. Coleman, Chief, Regulations
Development, Tracking, and Control,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS’ GROUP LIFE INSURANCE AND VETERANS’ GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

§9.2 [AMENDED]

2. Amend § 9.2(b)(2) by:

a. Removing “1-year period” and adding in its place “2-year period”;

b. In the last sentence removing “initial premium” and adding in its place “initial Veterans’ Group Life Insurance premium”; and

c. In the last sentence removing “termination of duty.” and adding in its place “termination of SGLI coverage.”.

§9.5 [AMENDED]

3. Amend § 9.5(d) by removing “1 year” and adding in its place “2 years”.

4. Amend § 9.14 by revising paragraphs (e) and (f) to read as follows:

§ 9.14 Accelerated Benefits.

* * * * *

(e) How much can you receive as an Accelerated Benefit? You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage.

(f) How do you apply for an Accelerated Benefit? (1) You can obtain an application form by writing the Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, New Jersey 07068-1733; calling the Office of Servicemembers' Group Life Insurance toll-free at 1-800-419-1473; or downloading the form from the Internet at www.insurance.va.gov. You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 80 Livingston Avenue, Roseland, New Jersey 07068-1733.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

* * * * *

§9.20 [AMENDED]

5. Amend § 9.20 by:

- a. In paragraph (b)(1) introductory text, removing "occurring—", and adding in its place "occurring on or after October 7, 2001."
- b. Removing paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii).
- c. Redesignating paragraph (b)(3) as paragraph (b)(2).

d. In paragraph (d)(1), removing “December 1, 2005, and your scheduled loss was a direct result of injuries incurred in Operation Enduring Freedom and Operation Iraqi Freedom.” and adding in its place “November 30, 2005.”.

[FR Doc. 2014-17900 Filed 07/30/2014 at 8:45 am; Publication Date: 07/31/2014]