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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AP12

Special Home Adaptation Grants for Members of the Armed Forces and Veterans with Certain Vision Impairment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final rule to amend its adjudication regulations regarding special home adaptation grants for members of the Armed Forces and veterans with certain vision impairment. This regulatory amendment is necessary to conform the regulations to changes mandated in the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012.

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

Applicability Date: The provisions of this final rule apply to all applications for benefits that are received by VA on or after October 1, 2012, the statutory effective date of the amendment, or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on or after October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 203 of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112-154, 126 Stat. 1165, 1177, amended 38 U.S.C. 2101(b) to expand the eligibility for members of the Armed Forces and veterans with certain vision impairments for special home adaptation grants. Prior to the amendment, eligible individuals with vision impairments were entitled to receive special home adaptation grants if the disability was rated as permanent and total and due to blindness in both eyes with 5/200 visual acuity or less. See 38 U.S.C. 2101(b)(1)(A) (2011). Section 203 redefines qualifying blindness as blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens. 126 Stat. at 1177. Section 203 also states that, for the purposes of 38 U.S.C. 2101(b)(2), an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. 126 Stat. at 1177.

VA finds that the language of the statute is clear on its face. Specifically, to qualify for this benefit, a claimant's disability must be due to blindness in both eyes having either (1) central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens or (2) an eye with a limitation in the fields of vision such that

the widest diameter of the visual field subtends an angle no greater than 20 degrees. In section 203, Congress also eliminated the requirement that qualifying blindness be permanently and totally disabling by clearly distinguishing it from those conditions which still require a finding of permanent and total disability. 126 Stat. at 1177.

Accordingly, VA is amending 38 CFR 3.809a(b), the implementing regulation for 38 U.S.C. 2101(b), to reflect the previously discussed statutory amendments. For clarity, VA is also reorganizing and making technical corrections to § 3.809a(b). No substantive changes are intended from the reorganization and technical corrections.

Administrative Procedure Act

The Secretary of Veterans Affairs (Secretary) finds good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This amendment merely revises VA's regulations to comply with a statutory mandate that VA provide special home adaptation grants to members of the Armed Forces and veterans with certain vision impairments. The regulatory change reflects the change in statute that VA is adopting directly, without change, into VA's regulations and does not involve interpretation of the statutory provision. Also, the reorganization and technical corrections made by this rule do not alter any substantive rights or duties. Therefore, prior notice and opportunity for public comment is unnecessary. Additionally, for the reasons previously stated, the Secretary finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d).

Executive Orders 12866 and 13563.

Executive Orders 12866 and 13563 direct agencies to assess the 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 website, 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. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the 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 the 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 numbers and titles for the programs affected by this document are Veterans Medical Care Benefits, 64.009; Specially Adapted Housing for Disabled Veterans, 64.106; and Veterans Compensation for Service-Connected Disability, 64.109.

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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 4, 2014, for publication.

List of Subjects in 38 CFR Part 3

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

Dated: September 9, 2014

William F. Russo,
Deputy Director,
Office of Regulation Policy & Management,
Office of the General Counsel,
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3 — ADJUDICATION

Subpart A-Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

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

2. Amend § 3.809a by revising paragraph (b) to read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

* * * * *

(b) A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service and meets the requirements described in either paragraph (b)(1) or (b)(2) of this section. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability that meets the requirements described in either paragraph (b)(1) or (b)(2) of this section.

(1) VA has rated the disability as permanently and totally disabling and it:

(i) Includes the anatomical loss or loss of use of both hands;

(ii) Is due to deep partial thickness burns that have resulted in contracture(s) with limitation of motion of two or more extremities or of at least one extremity and the trunk;

(iii) Is due to full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk; or

(iv) Is due to residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

(2) The disability is due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens. For the purposes of this paragraph, an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. The disability discussed in this paragraph need not be rated as permanently and totally disabling.

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