



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Parts 3 and 5

RIN 2900-AO13

VA Compensation and Pension Regulation Rewrite Project

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) published a notice of proposed rulemaking in the Federal Register on November 27, 2013, proposing to reorganize and rewrite its compensation and pension regulations in a logical, claimant focused, and user-friendly format. The intended effect of the proposed revisions was to assist claimants, beneficiaries, veterans' representatives, and VA personnel in locating and understanding these regulations. VA has since determined that an incremental approach to revising these regulations is the only feasible method for the Veterans Benefit Administration (VBA) as it exists today. Therefore, VA is withdrawing the proposed rule, RIN 2900-AO13-VA Compensation and Pension Regulation Rewrite Project, that was published on November 27, 2013, at 78 FR 71,042.

DATES: The proposed rule published on November 27, 2013, at 78 FR 71,042, is withdrawn as of [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Michael P. Shores, Director, Office of Regulations Policy & Management (00REG), Office of the Secretary, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461-4902 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The VA Office of the Secretary provides centralized management and coordination of VA's rulemaking process through its Office of Regulation Policy and Management (ORPM). ORPM oversaw VA's Regulation Rewrite Project (the Project) to improve the organization and clarity of VA's adjudication regulations, which are in current 38 CFR part 3. These regulations govern the adjudication of claims for VA's monetary benefits (including compensation, pension, dependency and indemnity compensation, and burial benefits), which are administered by the Veterans Benefits Administration (VBA).

The Project responded to a recommendation made by the VA Claims Processing Task Force in its October 2001 "Report to the Secretary of Veterans Affairs" and to criticisms of VA regulations by the U.S. Court of Appeals for Veterans Claims. The Task Force recommended that VA reorganize its regulations in a logical, coherent manner. The Court referred to the current regulations as a "confusing tapestry" and criticized VA for maintaining substantive rules in its Adjudication Procedures Manual (manual). Accordingly, the Project reviewed the manual to identify provisions that might be substantive and proposed to incorporate those provisions in a complete rewrite of part 3 that would be located at a new part 5. To be clear, the goal was never to substantively alter the law pertaining to VA monetary benefits, but to convey this law (to include current regulations, VA General Counsel opinions, court decisions, and substantive manual provisions) in readable language and an organized format. 78 FR at 71,042; see also 79 FR 57,660, 57,678 (Sep. 25, 2014) (commenting on the scope of the Rewrite Project).

VA published the rewritten material in 20 Notices of Proposed Rulemaking (NPRMs) and gave interested persons 60 days to submit comments after each publication. These NPRMs addressed specific topics, programs, or groups of regulatory material organized under the following Rulemaking Identifier Numbers (RIN):

- RIN 2900-AL67, Service Requirements for Veterans (January 30, 2004)
- RIN 2900-AL70, Presumptions of Service Connection for Certain Disabilities, and Related Matters (July 27, 2004)
- RIN 2900-AL71, Accrued Benefits, Death Compensation, and Special Rules Applicable Upon Death of a Beneficiary (October 1, 2004)
- RIN 2900-AL72, Burial Benefits (April 8, 2008)
- RIN 2900-AL74, Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries (January 14, 2011)
- RIN 2900-AL76, Benefits for Certain Filipino Veterans and Survivors (June 30, 2006)
- RIN 2900-AL82, Rights and Responsibilities of Claimants and Beneficiaries (May 10, 2005)
- RIN 2900-AL83, Elections of Improved Pension; Old-Law and Section 306 Pension (December 27, 2004)
- RIN 2900-AL84, Special and Ancillary Benefits for Veterans, Dependents, and Survivors (March 9, 2007)
- RIN 2900-AL87, General Provisions (March 31, 2006)
- RIN 2900-AL88, Special Ratings (October 17, 2008)

- RIN 2900-AL89, Dependency and Indemnity Compensation Benefits (October 21, 2005)
- RIN 2900-AL94, Dependents and Survivors (September 20, 2006)
- RIN 2900-AL95, Payments to Beneficiaries Who Are Eligible for More than One Benefit (October 2, 2007)
- RIN 2900-AM01, General Evidence Requirements, Effective Dates, Revision of Decisions, and Protection of Existing Ratings (May 22, 2007)
- RIN 2900-AM04, Improved Pension (September 26, 2007)
- RIN 2900-AM05, Matters Affecting the Receipt of Benefits (May 31, 2006)
- RIN 2900-AM06, Payments and Adjustments to Payments (October 31, 2008)
- RIN 2900-AM07, Service-Connected Disability Compensation (September 1, 2010)
- RIN 2900-AM16, VA Benefit Claims (April 14, 2008)

VA received numerous comments to the 20 NPRMs and on November 27, 2013, proposed amendments to the 20 NPRMs in one document, RIN 2900-AO13. 78 FR at 71,042. VA received additional comments on AO13, from private individuals and several Veterans Service Organizations, and VA thanks the commenters for the time they invested and their input.

As noted in RIN 2900-AO13, in 2012, the Veterans Benefits Administration (VBA) formulated a Transformation Plan to improve the delivery of benefits to veterans and their dependents and survivors. 78 FR at 71,043. VA acknowledged that, to ensure

successful implementation of the plan, a final rule with regard to the Rewrite Project would not be published in the near future and would ultimately require an evaluation of the feasibility of a one-time implementation of proposed Part 5. *Id.* In the interim, VA assured, Part 3 regulations would be updated and improved as needed, to include the type of readability changes proposed for Part 5. *Id.*

Over the past five years, such updates have occurred, see, e.g., 79 FR 32,653 (June 6, 2014) (implementing improvements sourced in RIN 2900-AL72), and VA proposes to continue this current rulemaking approach – updating Part 3 and Part 4 as needed – but at an accelerated pace designed to also incorporate needed changes from proposed Part 5 for clarity and simplicity. Thus, it will not be adopting a one-time implementation of proposed Part 5. This will avoid the inevitable confusion caused by two co-existing sets of regulations and manuals that may or may not be applicable depending on the date of the claim. It will avoid the delays and decreases in productivity inherent in any transition where adjudicators have to familiarize themselves with all new sections and provisions. It will also ease programming complexity and allow VBA to manage the risk associated with the transition to revised regulations. VA has already undertaken a review to identify and prioritize the needs and expectations for incorporating proposed Part 5 improvements, where possible, into the current Part 3 and Part 4.

Phased implementation allows for incremental assessment and development of the required system modifications. Controlling the rate of rewrite implementation allows VBA to retain, plan for, and mitigate adverse system impacts and development needs

by reordering phases as necessary. The plan also affords VBA flexibility in scaling personnel and other resource allocations to each new phase, if necessary. One-time implementation would require extensive training for personnel, as well as costs associated with IT equipment, installation, maintenance, support, and system updates. Even though the proposed rules were not intended to alter substantive law, they would alter the terminology, section numbers, and organization of the current regulations upon which current VA systems, applications, forms, and tools are based. Thus, one-time implementation would involve a rework of numerous computer-based processing applications, claims-related training tools and materials, quality assurance tools, claims-related forms, and the Adjudication Procedures Manual. It would syphon resources from existing modernization priorities, such as improvements to the Veterans Benefits Management System and National Work Queue. This phased rollout minimizes disruption of these major IT modernization projects, as well as other VA initiatives requiring substantial personnel or training.

Changes in Part 3 and Part 4 regulations, to include incorporation of proposed Part 5 improvements, where appropriate, can be achieved over a number of years. Some of these changes are already underway, with VA's modernized Part 4, VA Schedule for Rating Disabilities, slated for publication in the near future. This multi-year approach minimizes disruption on field operations (and ultimately claim production and accuracy), as well as VBA Central Office staffing required to implement the revised regulations.

For the above reasons, VA is withdrawing RIN 2900-AO13.

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. Jacquelyn Hayes-Byrd, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on April 3, 2018, for publication.

Dated: April 3, 2018

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