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DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO17

Home Improvements and Structural Alterations (HISA) Benefits Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to establish regulations for the Home Improvements and Structural Alterations (HISA) benefits program. Through the HISA benefits program, VA has provided monetary benefits to disabled veterans for necessary home improvements and alterations. An increase in the HISA benefits limit was authorized by the Caregivers and Veterans Omnibus Health Services Act of 2010. The proposed rule would codify regulations to govern the HISA benefits program and incorporate the increase in HISA benefits authorized by the 2010 Act.

DATES: Comments on the proposed rule must be received by VA on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, 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-AO17, Home Improvements and Structural Alterations (HISA) Benefits Program.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) 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: Shayla Mitchell, Program Analyst, Rehabilitation and Prosthetic Services (10P4R), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-0366 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 1717(a)(1) of title 38, United States Code (U.S.C.), authorizes the Secretary of Veterans Affairs (Secretary) to furnish home health services as part of medical services provided to veterans. As a part of home health services, 38 U.S.C. 1717(a)(2) authorizes VA to furnish improvements and structural alterations to the homes of disabled veterans “only as necessary to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities.” Section 1717(d) extends these same benefits to certain servicemembers. The HISA benefits program is distinct from VA’s authority under 38 U.S.C. 2101

through 2107 to provide specially adapted housing for disabled veterans, and HISA benefits may be received in addition to specially adapted housing benefits.

The HISA benefit is a fixed-amount monetary benefit subject to lifetime limits based on the nature of the beneficiary's disability; however, the beneficiary need not use the entire HISA benefit amount on a single improvement or structural alteration. In May 2010, section 516 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act), Public Law 111-163, amended 38 U.S.C. 1717(a)(2) to increase the maximum amount of the lifetime benefit.

This proposed rule would establish regulations to govern the HISA benefits program that articulate a clear national policy and encompass the increase in the HISA benefit limits authorized by the 2010 Act. We note that this rulemaking proposes new practices and policies related to the HISA benefits program and, therefore, this proposed rule would make changes in the administration of HISA benefits. These changes are intended to streamline the application process; simplify, reduce, or eliminate administrative burdens on both VA and HISA beneficiaries; and generally improve the administration of the program, all without increasing the costs of the program.

For example, the current program requests that applicants for HISA benefits provide multiple bids for construction projects. In practice, it is not uncommon for bids to come in at or above the maximum amount of the HISA benefit because, even under the increased benefit amount authorized by the 2010 Act, HISA benefits cannot exceed \$6,800. After receiving the bids and

other information submitted in an application, VA currently is required to review and assess all the information and take further administrative actions before approving the application and awarding the benefit. A similar process is followed after the improvement or structural alteration is completed and the beneficiary requests final payment. The regulatory framework proposed in this rulemaking will greatly simplify the process of filing and approving HISA claims. We expect that veterans and servicemembers eligible for HISA benefits and VA staff will find the new process much easier to work with, so that claims will be processed more quickly. We do not believe that the simplified process will have a negative impact on the integrity of the program because we have incorporated inspection and review processes to ensure that HISA benefits are awarded and spent in accordance with statutory intent.

Because we intend to establish a new regulatory framework, with new procedures and policies that in many ways represent a significant departure from the manner in which HISA is currently administered, we do not further address current practice in this rulemaking.

17.3100 Purpose and scope

Proposed § 17.3100 would set forth the purpose of the HISA program and the scope of §§ 17.3100 through 17.3130. Consistent with 38 U.S.C. 1717(a)(2), proposed § 17.3100(a) would state that the purpose of the HISA benefits program is to provide monetary benefits for improvements and structural alterations to the homes of eligible veterans or servicemembers that are necessary for the continuation of the provision of home health treatment of the

beneficiary's disability or that provide access to the beneficiary's home or to essential lavatory and sanitary facilities in the home.

Although 38 U.S.C. 1717(a)(2) authorizes VA to "furnish[]" improvements and structural alterations, we believe that Congress intended that VA pay for the cost of improvements or structural alterations, rather than that VA actually make the improvements or structural alterations. Our interpretation of the word "furnish" would permit VA to provide reimbursement to veterans who obtain such improvements or structural alterations, rather than actually identifying contractors and negotiating for the completion of particular projects. Our interpretation of the statute would ensure the most efficient and administratively convenient distribution of the limited funds authorized by section 1717(a)(2), and would represent a user-friendly way to administer the program to veterans and servicemembers.

We also note that improvements or structural alterations made with HISA benefits are distinct from other benefits available under the Veterans Health Administration's (VHA) Prosthetic and Sensory Aids Service under 38 U.S.C. 8123. The Prosthetic and Sensory Aids Service provides prosthetic equipment and devices that may require modifications to a beneficiary's home to ensure their proper function within the home, but these modifications would be paid for with Prosthetic and Sensory Aid Service funds, rather than HISA benefits.

HISA benefits are also distinct from the Specially Adapted Housing for Disabled Veterans benefit, authorized under 38 U.S.C. Chapter 21, which is administered by the Veterans Benefits Administration, provides a significantly

greater benefit amount, and is designed to assist certain eligible veterans who are entitled to compensation for permanent and total service-connected disability “in acquiring a suitable housing unit” or adaptations to housing necessary to accommodate the veteran’s disabilities. 38 U.S.C. 2101(a). Under the Specially Adapted Housing program, VA also provides “model plans and specifications of suitable housing units” and develops, maintains, and provides to veterans a “handbook containing appropriate designs for specially adapted housing.” 38 U.S.C. 2103. A veteran may obtain HISA benefits in addition to these other benefits.

Proposed paragraph § 17.3100(b) would clarify that these proposed regulations apply only to the HISA benefits program, unless at some future date another section in the CFR specifically provides otherwise.

17.3101 Definitions

Proposed § 17.3101 contains definitions applicable to the HISA benefits program.

“Access to the home” would mean the ability of the beneficiary to enter and exit the home and to maneuver within the home to at least one bedroom and essential lavatory and sanitary facilities. Although 38 U.S.C. 1717(a)(2) authorizes HISA benefits for “access to the home,” we broadly interpret this phrase to include movement of the beneficiary within the spaces necessary for daily living. Additionally, we interpret it as allowing beneficiaries with one means of entering or exiting the home to use their benefits to construct a second one.

In addition to access to the home itself, we would define “[a]ccess to essential lavatory and sanitary facilities” as having normal use of these facilities and their structural components. Beyond merely having the ability to move about in such spaces, a beneficiary may require that the structures within these spaces be altered to allow or enhance their normal use by the beneficiary. For example, within a kitchen or bathroom, counter heights may need to be lowered or existing plumbing fixtures may need to be replaced with accessible models.

We propose to define “[b]eneficiary” as “a veteran or servicemember who is awarded or who is eligible to receive HISA benefits.” Use of this term will make it easier to refer to these individuals in the regulations.

“Essential lavatory and sanitary facilities” would be defined as one bathroom equipped with a toilet and a shower or bath, one kitchen, and one laundry facility. Although many homes today are equipped with multiple bathrooms and sometimes more than one kitchen, we interpret the statutory reference to “essential lavatory and sanitary facilities” to be a limiting phrase. 38 U.S.C. 1717(a)(2). We believe that access to a single bathroom and a single kitchen facility is a reasonable interpretation of “essential” lavatory and sanitary facilities. A laundry facility would be included in the definition because clean clothing can reasonably be considered as important to sanitary living.

“HISA benefits” would be defined as a monetary benefit paid under the provisions of this program. As indicated above, under these regulations the HISA benefits program would not provide the actual construction of

improvements or structural alterations, but rather would provide monetary benefits to assist a beneficiary in paying for such construction.

“Home” would be defined as the primary place where the beneficiary resides. Our definition is based on the common understanding of the word “home” and our belief that Congress intended that HISA benefits be used to adapt the place where the beneficiary resides the majority of the time so that the beneficiary will derive the greatest benefit of the program. This definition would include medical foster homes. We note that 38 U.S.C. 1717(a)(3) precludes VA from furnishing improvements or structural alterations in “a setting other than the veteran’s home.” We interpret this as permitting alterations to an eligible servicemember’s home, which we would define as the place where the servicemember intends to reside after discharge from service.

We would define an “[i]mprovement or structural alteration” as a modification to a home or to an existing feature or fixture of a home, including repairs to, or replacement of, previously improved or altered features or fixtures. HISA benefits need not have been used to create or previously modify a feature or fixture that is in need of repair, but may be used to repair or replace previously improved or altered features or fixtures only if the beneficiary meets the requirements set forth in this rule. For instance, if a beneficiary moves into a home that already has an access ramp to the entrance that is in need of repair, HISA benefits may be used to repair or replace that ramp, provided that the beneficiary has a documented medical justification for the ramp.

For purposes of determining a servicemember's eligibility for HISA benefits, as discussed in more detail below, we would give "undergoing medical discharge" the same meaning as the term is defined in VA's interim final rule governing VA's program providing caregiver benefits to veterans and servicemembers. See 76 FR 26148, 26173, May 5, 2011 (38 CFR 71.15).

17.3102 Eligibility

Proposed § 17.3102 would concern eligibility for HISA benefits.

Consistent with 38 U.S.C. 1717(a)(2), proposed § 17.3102(a) would state that veterans who are eligible for medical services under 38 U.S.C. 1710(a) are eligible for HISA benefits.

In addition to HISA benefits for eligible veterans, 38 U.S.C. 1717(d)(1) authorizes VA to furnish HISA benefits to a member of the Armed Forces "who, as determined by the Secretary [of VA], has a disability permanent in nature incurred or aggravated in the line of duty in the active [military service] . . . if . . . such member is likely to be discharged or released from the Armed Forces for such disability." In most cases, title 38, U.S.C., does not authorize VA to provide medical benefits to servicemembers. However, we recently were authorized under 38 U.S.C. 1720G(a)(2)(A) to provide caregiver support to a "member of the Armed Forces undergoing medical discharge from the Armed Forces" who has a serious injury incurred or aggravated during his or her service. Although the statutory language differs, the intent of Congress in both the HISA and 38 U.S.C. 1720G is to authorize VA to provide benefits to servicemembers who will soon be, but who are not yet, veterans. Therefore, in § 17.3102(b), we propose to

provide HISA benefits only to a servicemember “who is undergoing medical discharge from the Armed Forces for a permanent disability that was incurred or aggravated in the line of duty in the active military, naval, or air service.” This language is similar to the eligibility language in 38 CFR 71.20(a)(2) of the interim final rule governing VA’s program providing caregiver benefits to veterans and servicemembers. See 76 FR 26148, 26173, May 5, 2011. We see no reason that a servicemember eligible for a caregiver should be denied access to his or her lifetime HISA benefit prior to discharge from service.

We also note that VA is limited in its ability to determine precisely whether a servicemember is “likely to be discharged or released from the Armed Forces for” a disability because this determination is made by the Department of Defense (DoD), not VA. Identifying servicemembers who are undergoing medical discharge will provide an objective, determinable point to determine eligibility for HISA benefits. We note that VA can easily identify these individuals through the new joint VA-DoD Integrated Disability Evaluation System (IDES), which integrates disability determination processing under each Department’s respective programs. The IDES program identifies all servicemembers who are in need of medical discharge, and facilitates the process. Using IDES to identify servicemembers eligible for HISA benefits will not only facilitate the administration of the HISA program for VA by providing a clear eligibility criterion, it will help us identify individuals who are in need of HISA benefits, so that we can ensure that they are aware of them.

17.3105 HISA benefit lifetime limits

In proposed § 17.3105(a), we would establish that the HISA benefit limits, as set forth in 38 U.S.C. 1717(a)(2), are limits established for the beneficiary's lifetime. We would explain that a beneficiary is authorized to use HISA benefits for more than one improvement or structural alteration as long as the beneficiary has not exhausted his or her lifetime benefit limit. We also would explain that, if the beneficiary does not have to use the entire approved amount for construction of a particular improvement or structural alteration, the unused amount will be added back into the beneficiary's remaining lifetime balance, and will be available for future use. This is also reflected in the HISA benefit payment procedures set forth in proposed § 17.3130(c)(4).

The HISA benefit lifetime limits, established in 38 U.S.C. 1717(a)(2), are based on the nature and severity of the beneficiary's disability and the date on which the beneficiary first applies for HISA benefits. Specifically, the law provides that a greater benefit amount may be awarded if a beneficiary has a service-connected disability rated at 50 percent or greater, or if the beneficiary seeks HISA benefits to address a service-connected disability or a compensable disability treated "as if" it were service connected under 38 U.S.C. 1151, e.g., a disability caused by VA treatment or vocational rehabilitation (see 38 U.S.C. 1710(a)(2)(C)). A lesser benefit amount may be awarded when HISA benefits are intended for use in addressing nonservice-connected conditions for certain veterans or when the beneficiary has a service-connected disability rated less than 50 percent.

In addition to the nature or severity of the disability, the statute clearly predicates eligibility for the increased HISA benefit amount or prior HISA benefit amount on whether the beneficiary “first applies for benefits . . . before May 5, 2010,” 38 U.S.C. 1717(a)(2)(A)(i), (B)(i), or “on or after May 5, 2010,” 38 U.S.C. 1717(a)(2)(A)(ii), (B)(ii). We interpret “first applies” to mean submitting an application to VA, according to the VA process in place at the time, for HISA benefits. Thus, those beneficiaries who first applied for HISA benefits before the effective date of the change would be subject to the limits that were in effect when they first applied. In proposed paragraphs (b), (c) and (d), we would establish eligibility for the increased HISA benefit amount or prior HISA benefit amount using substantively identical language based on the date of the first application for HISA benefits.

Consistent with 38 U.S.C. 1717(a)(2)(A), proposed § 17.3105(b) would identify the greater lifetime HISA benefit amount limits to address a need due to a service-connected disability under 38 U.S.C. 1710(a)(1)(A), to address a need due to a compensable disability treated “as if” it were service connected under section 1710(a)(2)(C), or to address any need for a veteran with a service-connected disability rated 50 percent or more under section 1710(a)(1)(B).

Consistent with 38 U.S.C. 1717(a)(2)(B), proposed § 17.3105(c) would identify the lesser lifetime HISA benefit limits to address a need of a beneficiary who is eligible for HISA benefits under proposed § 17.3102(a), but does not qualify for the greater lifetime HISA benefit amount under proposed § 17.3105(b).

In proposed § 17.3105(d), we would set forth the lifetime HISA benefits for servicemembers eligible under proposed § 17.3102(b). The provisions of 38 U.S.C. 1717(d)(1) require that VA provide HISA benefits to eligible servicemembers for a “disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service” for which the servicemember is “likely to be discharged or released from the Armed Forces for such disability.” Further provisions in the law imply that the limits on HISA benefits based on the nature and severity of a disability, as described above, should also be applied, but the law is not entirely clear on what level of lifetime benefit should be made available to servicemembers. We believe that any “disability permanent in nature incurred or aggravated in the line of duty” may be reasonably expected to result in a disability award based on service connection, and therefore the beneficiary would be eligible for VA medical services under 38 U.S.C. 1710(a)(1)(A) for such disability once the beneficiary becomes a veteran. For this reason, we would make the greater lifetime HISA benefit amount available for all servicemembers who qualify under proposed § 17.3102(b) and 38 U.S.C. 1717(d)(1). The benefits must be used for the specific permanent disability or disabilities for which the beneficiary is undergoing medical discharge from the Armed Forces. We recognize that it is possible to interpret the law differently. However, Congress clearly intended for VA to make these benefits available to servicemembers at the earliest opportunity. We believe it will better serve the interests of our seriously wounded servicemembers and is a better use of VA’s limited HISA resources to avoid making resource-

intensive hypothetical determinations about these servicemembers' future ratings of service-connected disabilities. We expect that very few, if any, such determinations would result in smaller awards of benefits. Moreover, because Congress was silent as to the applicable benefit amount for servicemembers, we believe that our interpretation is a reasonable exercise of the discretion granted to VA by Congress to implement the statute.

In proposed § 17.3105(e)(1), we address the impact of a new award or an increased rating for a service-connected disability on the HISA benefit lifetime limit. A veteran may receive a new award of compensation for a service-connected disability or for a disability treated "as if" it were service connected, or the veteran may receive an increased service-connected disability rating after an initial application for HISA benefits. Thus, the issue presented involves the appropriate benefit amount for a veteran who meets the service-connected-disability requirements for the greater HISA benefit after the veteran has already first applied for the lesser HISA benefit.

In section 516(b) of the 2010 Act that amended 38 U.S.C. 1717 to authorize increased lifetime limits, Congress required VA to construe the amendment as follows: "A veteran who exhausts such veteran's eligibility for benefits under [38 U.S.C.] 1717(a)(2) . . . before the date of the enactment of th[e 2010] Act, is not entitled to additional benefits under such section by reason of the amendments made [to increase the lifetime amount limitations]." We interpret this to be a statement of Congress' intent to raise the HISA benefits amount available to beneficiaries who initially seek to make improvements or

structural alterations after May 5, 2010, and not to provide additional HISA benefits to those who received this assistance previously. This is a reasonable interpretation of the law because it reflects the reality that those beneficiaries seeking to make improvements or structural alterations today are faced with costs that are significantly higher than they were in 1992, when the lifetime amount limitations were last increased.

However, we do not believe that Congress, in section 516 of the 2010 Act, intended to prohibit beneficiaries from obtaining HISA benefits for which they had not been previously eligible. We believe that when a beneficiary, who previously was eligible for and obtained lesser HISA benefits only under the statutory equivalent of proposed § 17.3105(c), is later awarded compensation for a service-connected disability, compensation for a disability “as if” it were service connected under 38 U.S.C. 1151, or an increased rating of 50 percent or more for a service-connected disability that results in eligibility for the greater HISA benefit under proposed § 17.3105(b), such beneficiary should be allowed to receive the new greater benefit based on that new or increased award. We do not believe this interpretation violates the restriction of section 516 of the 2010 Act because eligibility for the greater benefit based on the new or increased award did not exist when the beneficiary first applied. In other words, such a beneficiary would not have “first applie[d]” for the greater HISA benefit available at that time; rather, that beneficiary would have “first applie[d]” for the lesser HISA benefit available at that time. In short, individuals who prior to May 5, 2010, sought the greater HISA benefit for a service-connected disability, for a

disability treated “as if” it were service connected, or based on having a disability rating of 50 percent or more for a service-connected disability who then seek the new greater HISA benefit after such date would not be eligible for the increased greater HISA benefit amount. However, our proposed interpretation of the law would authorize the increased greater HISA lifetime benefit amount for individuals who prior to May 5, 2010, sought the lesser HISA benefit for a nonservice-connected disability and who then seek the greater HISA benefit on or after that date for a service-connected disability, for a disability treated “as if” it were service connected, or based on having a disability rating of 50 percent or more for a service-connected disability.

VA has consistently interpreted section 1717 to allow veterans to apply for the greater HISA benefit if they were not previously eligible. Additionally, we have searched the legislative history and have not found an indication that our interpretation is contrary to Congress’ intent. H.R. Conf. Rep. 102-871, which discusses the increase of HISA benefit amounts to \$4,100 and \$1,200, explains that “a veteran who, prior to January 1, 1990, received the maximum amount of reimbursement authorized under the current limits of section 1717 is not entitled to additional monetary benefits by reason of amendments.” Based on this explanation it is safe to assume that a veteran who did not receive the maximum amount—that is, veterans who had previously received benefits only under the lower statutory threshold—may be entitled to the greater benefit by reason of amendments. Therefore, our interpretation allowing beneficiaries who previously applied for the lesser benefit to apply for the greater benefit under proposed

§ 17.3105 is reasonable, particularly in the absence of any indication otherwise when Congress has expressly stated other limitations. This interpretation is also consistent with VA's efforts to provide the maximum assistance to beneficiaries, who would otherwise be unable to receive additional HISA funds that Congress has made available to address veterans' increased disability statuses and growing costs of construction.

We would not authorize the full increased HISA lifetime benefit amount for beneficiaries who applied for HISA benefits under section 1717(a)(2)(B), and then later apply and are eligible for the greater HISA benefits under section 1717(a)(2)(A); rather, proposed § 17.3105(e) would authorize an award up to the amount of HISA benefits that the beneficiary would be eligible for under proposed § 17.3105(c) minus the amount of HISA benefits previously used by the beneficiary. This will ensure that these beneficiaries do not receive more than the authorized lifetime HISA benefit amount. Additionally, in no instance will any beneficiary be approved for more than the highest amount specified in the statute and regulation.

The following example provides an illustration of the effect of proposed § 17.3105(e). A beneficiary has a service-connected disability that is originally determined to be less than 50 percent and for which the beneficiary does not require HISA benefits (e.g., visual impairment) and has a nonservice-connected disability for which HISA benefits would provide relief (e.g., beneficiary walks with a cane and cannot climb stairs). Such beneficiary may exhaust the HISA benefit available under § 17.3105(c) for the nonservice-connected disability to provide a

ramp to assist in entering and exiting the beneficiary's home. Later, if that beneficiary's disability rating for his visual impairment is increased to 50 percent, the beneficiary would become eligible for an award up to the greater HISA benefit amount, which could be used to address either a service-connected or nonservice-connected disability. The new amount of HISA benefits available, however, would be limited to the difference between the greater HISA benefit amount and the amount of HISA benefits previously awarded.

In § 17.3105(e)(2), we would explain that a beneficiary who received HISA benefits as a servicemember may not receive additional HISA benefits simply because of a change in status from "servicemember" to "veteran." We believe that Congress intended for VA to provide HISA benefits at the earliest point in time to servicemembers dealing with disabilities resulting from their service, not to provide them with a benefit that could later be duplicated as part of the array of benefits available to them based on their status as a veteran.

17.3120 Application for HISA benefits

In proposed § 17.3120, we would state that, to apply for HISA benefits, the beneficiary must submit a complete application to VA, and we would identify all of the requirements for a complete HISA benefits application.

In proposed § 17.3120(a)(1), we would require submission of a prescription written or approved by a VA physician that identifies the specific improvement or structural alteration recommended and includes the diagnosis and medical justification for the improvement or structural alteration. VA relies on

medical determinations to identify whether a beneficiary has a disability, and what treatments are appropriate for that disability. For approval of HISA benefits, we would require that the prescription be written or approved by a VA physician because VA physicians are highly qualified to determine what improvements or structural alterations would best serve those with disabilities common to veterans and servicemembers. Moreover, all veterans seeking HISA benefits must be eligible for care under section 1710(a) and therefore they are eligible for a determination by a VA physician. Servicemembers will be examined by a VA physician as part of the IDES process and may obtain the required prescription or approval of a prescription at that time. The requirement for a prescription is an appropriate, cost effective way to determine the necessity of the improvement or alteration as required by 38 U.S.C. 1717(a)(2). VA typically delivers this prescription directly to the HISA program office on the beneficiary's behalf.

Proposed § 17.3120(a)(2) would require that a completed VA Form 10-0103, Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, be included with the HISA benefits application. VA Form 10-0103 is the approved form for requesting HISA benefits and, when completed, provides VA with sufficient information to accurately identify the beneficiary and determine the beneficiary's eligibility for HISA benefits. That form is currently being modified to reflect the new requirements of this proposed rule, and we further address this information collection later in this rulemaking.

Proposed § 17.3120(a)(2) would indicate that a HISA application requires a completed and signed VA Form 10-0103, Veterans Application for Assistance

in Acquiring Home Improvement and Structural Alterations. Additionally, this form is where the beneficiary may request payment in advance of construction of the improvement or structural alteration. This advance payment would provide the beneficiary with funds for up-front costs associated with the improvement or structural alteration. Specific details on advance payment are outlined in proposed § 17.3130.

In proposed § 17.3120(a)(3), we would require all applicants to submit a homeowner's statement indicating that the homeowner agrees to allow construction of the improvement or structural alteration on the homeowner's property. We would require that the statement be notarized if the beneficiary is not the owner of the property.

In general terms, the homeowner's statement provides verification that the improvement or structural alteration will be completed in a dwelling that the beneficiary is legally authorized to use as his or her home, as required by 38 U.S.C. 1717(a)(3). In cases where the beneficiary does not own the property, we believe that the notarized statement from the property owner may help protect the beneficiary against any future claims of unauthorized structural changes to the home. It will also help ensure that structural improvements or alterations are not provided for an unauthorized use under 38 U.S.C. 1717.

In proposed § 17.3120(a)(4), we would require veterans and servicemembers applying for HISA benefits to provide a written and itemized estimate of costs for the improvement or structural alteration. The itemized estimate will be evaluated to ensure that the items listed on it match with the

beneficiary's prescription. This will allow VA to protect the integrity of the program and HISA benefit funds from potential abuse. VA would also use the itemized estimate of costs to determine the appropriate amount of an advance payment to the beneficiary made upon request under proposed § 17.3130, which is explained in greater detail below.

In proposed § 17.3120(a)(5), we would require that the beneficiary provide a color photograph of the unimproved site for the improvement or structural alteration. Together with the pre-award inspection conducted under proposed § 17.3120(b), this photograph will help ensure that the proposed improvement or structural alteration is appropriate to the site and will assist VA in preventing fraud. We would compare the photograph submitted with the application to the one included with the final payment request, as required in § 17.3130(b), to verify that the improvement or structural alteration was completed as indicated in the application.

Proposed § 17.3120(b) would require the beneficiary to consent to VA's inspection of the site of the proposed improvement or structural alteration. An in-home evaluation before construction begins would allow VA to make an administrative determination that the proposed improvement or structural alteration is reasonably designed to meet the needs created by the beneficiary's disability. We also intend to use the pre-approval inspection to verify that the proposed improvement or structural alteration has not been previously constructed and does not duplicate resources that are already in the beneficiary's home. Because HISA benefits are provided to allow beneficiaries to make

necessary improvements or structural alterations, we believe it would be inappropriate to provide the HISA benefits if such improvements or structural alterations already exist. The statute authorizes the Secretary to “furnish” improvements and alterations, which we interpret to include the authority to cause them to be constructed via authorization of HISA payments, but to the extent the modifications already exist before a claim is made for the benefit, the improvements and alterations have already been furnished, and VA lacks authority to reimburse a beneficiary for them. Finally, the pre-approval inspection would allow VA to determine that the beneficiary’s home can reasonably accommodate the improvement or structural alteration. VA may determine that the submitted documentation is sufficient to make all such determinations and that the in-home inspection would not be required.

VA may also conduct an inspection after the construction is finished as part of the final payment process under § 17.3130.

VA’s inspections should not be confused with or interpreted as code enforcement or structural integrity inspections. As indicated above, the HISA benefit is not a construction benefit and VA does not have expertise in such matters. Issues of structural integrity and code compliance are integral to the agreement that the veteran, like any other homeowner, enters into with a contractor. HISA benefits may be used to pay for the expenses of inspections designed to ensure compliance with those matters, but VA’s inspection is for administrative, not safety or enforcement, purposes.

Proposed § 17.3120(c) would state that VA will review only complete HISA benefits applications for approval and will notify the beneficiary if any required documentation is missing from the application. If the beneficiary does not provide the missing documentation to VA within 30 days, VA will notify the beneficiary that the application has been closed. VA will inform the applicant that the closed application may be re-opened by providing the previously missing information, thus minimizing any adverse impact on the applicant. However, because several key elements of the application, such as costs associated with the improvement or structural alteration, may change over time, we would require the applicant to provide updated information after any lengthy period of time. We believe that this process will encourage applicants to keep moving forward with their applications and increase the efficiency of program operations by eliminating repeated follow-up correspondence requesting information.

17.3125 Approving HISA benefits applications

Proposed § 17.3125(a) would establish the criteria that VA will use to approve a HISA benefits application.

Proposed § 17.3125(a)(1) would state that the beneficiary's application must meet the requirements of the regulations applicable to the HISA benefits program.

Proposed § 17.3125(a)(2) would require VA to determine that the proposed improvement or structural alteration is reasonably designed to address the needs of the beneficiary and is appropriate for the beneficiary's home. This

determination may be based on documentation provided by the beneficiary or through an in-home inspection, as authorized by § 17.3120(b).

Proposed § 17.3125(b) would describe the written notification that VA will provide to the beneficiary when a HISA benefits application is approved. The notification will include the total amount of the award of HISA benefits. VA will only authorize charges that VA considers to be reasonably designed to address the needs of the beneficiary and in keeping with the purpose of the HISA benefit. The notification will also indicate whether an advance payment is approved and will reiterate the beneficiary's obligation to use the advance payment only for the improvement or structural alteration defined in the application. Recipients will be reminded of their obligation to submit a request for final payment upon completion of the construction.

Notification of approval of HISA benefits will also include a notice of the right to appeal and information about how to pursue an appeal. We believe it necessary to provide this information even when approving an application to allow the beneficiary to appeal any part of VA's determination.

17.3126 Disapproving HISA benefits applications

In proposed § 17.3126, we would state that VA will disapprove any HISA benefits application that does not meet all of the criteria outlined in § 17.3125(a), which means that the application was either inconsistent with the regulations governing the HISA benefits program or that the proposed improvement or structural alteration is not found to be reasonably designed to address the needs

of the beneficiary and/or is not appropriate for the beneficiary's home. VA will notify the beneficiary in writing of the decision, detailing the basis for the disapproval, and will provide notice to the beneficiary of his/her right to appeal the decision.

17.3130 HISA benefits payment procedures

Under the HISA benefits program, two types of payments are authorized: advance and final. As previously discussed, the purpose of the advance payment is to provide the beneficiary with funds for up-front costs authorized under the HISA benefits program.

Proposed § 17.3130(a) would state that, upon request of the beneficiary, VA may make an advance payment equal to 50 percent of the total amount of HISA benefits VA has approved for the improvement or structural alteration. We believe that an advance payment of 50 percent is appropriate based on standard business practices and our experience with administering the HISA benefits program.

A beneficiary may request the advance payment by completing the appropriate space on VA Form 10-0103, as indicated in proposed § 17.3120(a)(2). Absent a request, VA will not make an advance payment of HISA benefits. VA will make the advance payment within 30 days of the application approval. Only one advance payment will be authorized per approved application. Because providing funds before the beneficiary has made any improvements or structural alterations may put HISA benefits at risk of

misuse, VA Form 10-0103 includes a statement that the beneficiary requesting the advance payment must commit to use the funds as described in the application and to submit the request for final payment. VA reserves the right to seek reimbursement of the advanced HISA benefit amount if the beneficiary does not comply.

Proposed § 17.3130(b) states that the beneficiary must submit a complete final payment request to VA within 60 days after the application for HISA benefits is approved or, if an advance payment was provided, within 60 days after the advance payment is made by VA. Final payment would not be authorized until all elements of the complete final payment request are received by VA. To be complete, the final payment request must include a statement that the construction indicated in the application has been completed, a color photograph of the completed work, and documentation of the itemized actual costs for construction of the improvement or structural alteration.

VA would compare the color photograph of the completed improvement or structural alteration to the color photograph included with the HISA benefits application to substantiate that the improvement or structural alteration was completed. Documentation of the itemized actual costs of the construction will be used to determine the correct amount of the final payment.

Proposed § 17.3130(c) would describe the process that VA will follow after a complete final payment request is received. Proposed § 17.3130(c)(1) would state that VA may conduct an on-site inspection to determine that the

improvement or structural alteration was actually completed and would indicate that no payment will be made unless construction has been completed.

In proposed § 17.3130(c)(2), we would explain the method of calculating the final payment. The final payment will equal the full approved HISA benefit amount or the total actual cost of the improvement or structural alteration, whichever is less. In all cases, the amount of any advance payment will be subtracted from the amount to be paid.

In proposed § 17.3130(c)(3), we would indicate that the beneficiary would be obligated to reimburse VA if the total actual cost of construction is less than the amount of any advance payment.

In proposed § 17.3130(c)(4), we would state that final payment on a HISA benefits application would preclude VA from furnishing additional HISA benefits under that application. Any unused approved HISA benefit amount on an application would be credited back to the beneficiary's lifetime HISA benefit balance and would be available for use under future applications. A beneficiary who has not exhausted the lifetime HISA benefit may submit a new application for remaining HISA benefits by once again following the process set forth in this regulation.

In proposed § 17.3130(d), we would address the consequences of the failure of the beneficiary to submit a final payment request. As indicated previously, when a beneficiary requests an advance payment on VA Form 10-0103, the beneficiary commits to use the funds according to the plans articulated in the application and to submit a final payment request. We believe

that this commitment is necessary to ensure appropriate use of the HISA benefit and to protect the HISA benefit program from abuse. If a beneficiary who received an advance payment does not submit a final payment request, VA will send a notice as a reminder of the commitment to complete the process. We acknowledge that home improvement projects are often lengthy. We will allow for the beneficiary to explain any delays in the construction that may have led to the delay in submitting the final payment request. VA has every intention of allowing the beneficiary a reasonable amount of time in which to finalize construction of the improvement or structural alteration. If a final payment request is not received or if suitable explanations for delay are not provided, VA reserves the right to attempt collection of any HISA benefits funds paid in advance.

If a final payment request is not received from a beneficiary who did not request an advance payment, VA will close the application and will not pay HISA benefits on that application. Before closing the application, VA will send a notice to alert the beneficiary of the impending action. If the beneficiary does not respond to the notice, providing adequate information to justify the delay, VA will proceed with closing the file and send a notice of closure to the beneficiary. The notice will provide the reason for closure and include information regarding the right to appeal the decision.

Proposed § 17.3130(e) would state that, if a VA-conducted inspection of the site of construction of the improvement or structural alteration reveals that the construction has not been completed as purported in a final payment request, VA

may seek reimbursement of any advance payment amount made to the beneficiary. However, if the beneficiary shows that the failure to complete the project was the fault of the contractor, such as misconduct on the part of the contractor (including absconding with the funds) or bankruptcy of the contractor, VA will not seek to recover those funds from the beneficiary. Nor will VA credit the amount of the lost funds to the beneficiary's lifetime HISA benefits limit because they were paid out in accordance with the HISA program set forth in this regulation. The loss arose from the agreement for the construction of the improvement or structural alteration between the beneficiary and the contractor, and any attempt to recover the funds from the contractor must be made by the beneficiary.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance, including VHA Handbook 1173.14, would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval

by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking and the related form to OMB for review.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. VA Form 10-0103, Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, was previously approved by OMB under OMB control number 2900-0188. This approval allows a collection of information requested in proposed § 17.3120. Proposed §§ 17.3120 and 17.3130 contain new collections of information under the Paperwork Reduction Act of 1995, which are reflected in an updated version of VA Form 10-0103 that has been submitted to OMB for review. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent: by mail or hand delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; by fax to (202) 273-9026; or through

www.Regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-AO17 - Home Improvements and Structural Alterations (HISA) Benefits Program.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA’s estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed amendments to 38 CFR 17.3120 and 17.3130 contain collections of information under the Paperwork Reduction Act of 1995 for which we are requesting approval by OMB. These collections of information are described immediately following this paragraph, under their respective titles.

Title: Application for HISA Benefits.

Summary of collections of information: The proposed rule at § 17.3120 would require the beneficiary to submit VA Form 10-0103, a medical prescription, a statement from the homeowner (notarized, if the homeowner is not the beneficiary), an estimate of the costs for the improvement or structural alteration, and a color photograph of the unimproved site. VA Form 10-0103 is currently approved under OMB No. 2900-0188.

Description of the need for information and proposed use of information: This information is needed to ensure that the applicant meets the requirements provided in proposed §§ 17.3100 through 17.3130 and 38 U.S.C. 1717(a) and (d). Specifically, the medical prescription is needed to confirm the disability, and to help VA determine if the requested improvement or structural alteration is necessary for the treatment of the beneficiary's disability or necessary to provide access to and within the home. In those cases where the beneficiary is not the homeowner, the notarized statement will protect the beneficiary against any claims of unauthorized improvement or alteration made to the homeowner's property and provide verification that the improvement or structural alteration will be completed in a dwelling that the beneficiary is legally authorized to use as

his/her home. When the beneficiary is the homeowner the statement validates that the improvement or structural alteration is being completed in the beneficiary's home. A cost estimate is needed for VA to determine if the proposed improvement or structural alteration is reasonably designed to address the needs of the beneficiary. A photograph of the unimproved site is needed to ensure that the proposed improvement or structural alteration is appropriate and help VA in preventing fraud.

Description of likely respondents: Veterans and servicemembers applying for HISA benefits.

Estimated number of respondents per year: 7,000.

Estimated frequency of responses per year: 1.

Estimated average burden per response: 5 minutes.

Estimated total annual reporting and recordkeeping burden: 583 hours.

Title: HISA Benefits Payment Procedures.

Summary of collections of information: The proposed rule at § 17.3130 would require beneficiaries to submit a final payment packet to VA that consists of a statement by the beneficiary that the improvement or structural alteration was completed, a color photograph of the completed work, and documented evidence of total itemized actual costs.

Description of the need for information and proposed use of information: The information required under this collection will be used as verification that the improvement or structural alteration has been completed and will serve as record

of the associated costs. VA will make payment of HISA benefits awards based on the documents required under this collection.

Description of likely respondents: Veterans and servicemembers.

Estimated number of respondents per year: Applications: 7,000.

Estimated frequency of responses per year: Applications: 1.

Estimated average burden per response: 5 minutes

Estimated total annual reporting and recordkeeping burden: 583 hours.

Regulatory Flexibility Act.

The Secretary hereby certifies that this proposed rule would 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 proposed rule would not cause a significant economic impact on construction companies and their suppliers since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

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 given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

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 October 18, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims;
Day care; Dental health; Drug abuse; Foreign relations; Government contracts;
Grant programs-health; Grant programs-veterans; Health care; Health facilities;
Health professions; Health records; Homeless; Medical and dental schools;
Medical devices; Medical research; Mental health programs; Nursing homes;
Philippines; Reporting and recordkeeping requirements; Scholarships and
fellowships; Travel and transportation expenses; Veterans.

Dated: November 14, 2013

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

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

PART 17 -- MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

2. Add an undesignated center heading and §§ 17.3100 through 17.3130 following the authority citation at the end of § 17.1008 to read as follows:

HOME IMPROVEMENTS AND STRUCTURAL ALTERATIONS (HISA)
PROGRAM

Sec.

17.3100 Purpose and scope.

17.3101 Definitions.

17.3102 Eligibility.

17.3103-17.3104 [Reserved]

17.3105 HISA benefit lifetime limits.

17.3106-17.3119 [Reserved]

17.3120 Application for HISA benefits.

17.3121-17.3124 [Reserved]

17.3125 Approving HISA benefits applications.

17.3126 Disapproving HISA benefits applications.

17.3127-17.3129 [Reserved]

17.3130 HISA benefits payment procedures.

HOME IMPROVEMENTS AND STRUCTURAL ALTERATIONS (HISA)
PROGRAM

§ 17.3100 Purpose and scope.

(a) Purpose. The purpose of §§ 17.3100 through 17.3130 is to implement the Home Improvements and Structural Alterations (HISA) program. The purpose of the HISA benefits program is to provide eligible beneficiaries monetary benefits for improvements and structural alterations to their homes when such improvements and structural alterations:

(1) Are necessary for the continuation of the provision of home health treatment of the beneficiary's disability; or

(2) Provide the beneficiary with access to the home or to essential lavatory and sanitary facilities.

(b) Scope. 38 CFR 17.3100 through 17.3130 apply only to the administration of the HISA benefits program, unless specifically provided otherwise.

(Authority: 38 U.S.C. 501, 1717(a)(2))

§ 17.3101 Definitions.

For the purposes of the HISA benefits program (§§ 17.3100 through 17.3130):

Access to essential lavatory and sanitary facilities means having normal use of the standard structural components of those facilities.

Access to the home means the ability of the beneficiary to enter and exit the home and to maneuver within the home to at least one bedroom and essential lavatory and sanitary facilities.

Beneficiary means a veteran or servicemember who is awarded or who is eligible to receive HISA benefits.

Essential lavatory and sanitary facilities means one bathroom equipped with a toilet and a shower or bath, one kitchen, and one laundry facility.

HISA benefits means a monetary payment by VA to be used for improvements and structural alterations to the home of a beneficiary in accordance with §§ 17.3100 through 17.3130.

Home means the primary place where the beneficiary resides or, in the case of a servicemember, where the beneficiary intends to reside after discharge from service.

Improvement or structural alteration means a modification to a home or to an existing feature or fixture of a home, including repairs to or replacement of previously improved or altered features or fixtures.

Undergoing medical discharge means that a servicemember has been found unfit for duty due to a medical condition by their Service's Physical Evaluation Board, and a date of medical discharge has been issued.

(Authority: 38 U.S.C. 501, 1717)

§ 17.3102 Eligibility.

The following individuals are eligible for HISA benefits:

(a) A veteran who is eligible for medical services under 38 U.S.C. 1710(a).

(b) A servicemember who is undergoing medical discharge from the Armed Forces for a permanent disability that was incurred or aggravated in the line of duty in the active military, naval, or air service. A servicemember would be eligible for HISA benefits while hospitalized or receiving outpatient medical care, services, or treatment for such permanent disability.

(Authority: 38 U.S.C. 501, 1717)

§§ 17.3103-17.3104 [Reserved]

§ 17.3105 HISA benefit lifetime limits.

(a) General. Except as provided in paragraph (e) of this section, a beneficiary's HISA benefit is limited to the lifetime amount established in paragraphs (b), (c), or (d) of this section, as applicable. A beneficiary may use HISA benefits to pay for more than one home alteration, until the beneficiary

exhausts his or her lifetime benefit. HISA benefits approved by VA for use in a particular home alteration but unused by the beneficiary will remain available for future use.

(b) HISA benefits for a service-connected disability, a disability treated “as if” it were service connected, or for veterans with a service-connected disability rated 50 percent or more.

(1) If a veteran:

(i) Applies for HISA benefits to address a service-connected disability;

(ii) Applies for HISA benefits to address a compensable disability treated “as if” it is a service-connected disability and for which the veteran is entitled to medical services under 38 U.S.C. 1710(a)(2)(C) (e.g., a disability acquired through treatment or vocational rehabilitation provided by VA); or

(iii) Applies for HISA benefits to address a nonservice-connected disability, if the beneficiary has a service-connected disability rated at least 50 percent disabling; and

(2) The veteran first applies for HISA benefits:

(i) Before May 5, 2010, then the veteran’s lifetime HISA benefit limit is \$4,100.

(ii) On or after May 5, 2010, then the veteran’s lifetime HISA benefit limit is \$6,800.

(c) HISA benefits for any other disabilities. If a veteran who is eligible for medical services under 38 U.S.C. 1710(a) applies for HISA benefits to address a

disability that is not covered under paragraph (b) of this section, and the veteran first applies for HISA benefits:

(1) Before May 5, 2010, then the veteran's lifetime HISA benefit limit is \$1,200; or

(2) On or after May 5, 2010, then the veteran's lifetime HISA benefit limit is \$2,000.

(d) Servicemembers. If a servicemember is eligible for HISA benefits under § 17.3102(b), and the servicemember first applies:

(1) Before May 5, 2010, then the servicemember's HISA benefit lifetime limit is \$4,100; or

(2) On or after May 5, 2010, then the servicemember's HISA benefit lifetime limit is \$6,800.

(e) Increases to HISA benefit lifetime limit.

(1) A veteran who received HISA benefits under paragraph (c) of this section, and who subsequently qualifies for HISA benefits under paragraph (b)(1) of this section on or after May 5, 2010, due to a new award of disability compensation based on service connection or an increased disability rating, may apply for the increased lifetime benefit amount under paragraph (b)(2)(ii) of this section. The increased amount that will be available is \$6,800 minus the amount of HISA benefits previously used by the beneficiary.

(2) A veteran who previously received HISA benefits as a servicemember is not eligible for a new lifetime HISA benefit amount based on his or her attaining veteran status, but the veteran may file a HISA claim for any HISA

benefit amounts not used prior to discharge. The veteran's subsequent HISA award cannot exceed the applicable award amount under paragraphs (b), (c), or (e)(1) of this section, as applicable, minus the amount of HISA benefits awarded to the veteran while the veteran was a servicemember.

(Authority: 38 U.S.C. 501, 1717)

§§ 17.3106-17.3119 [Reserved]

§ 17.3120 Application for HISA benefits.

(a) Application package. To apply for HISA benefits, the beneficiary must submit to VA a complete HISA benefits application package. A complete HISA benefits application package includes all of the following:

(1) A prescription, which VA may obtain on the beneficiary's behalf, written or approved by a VA physician that includes all of the following:

- (i) The beneficiary's name, address, and telephone number.
- (ii) Identification of the prescribed improvement or structural alteration.
- (iii) The diagnosis and medical justification for the prescribed

improvement or structural alteration.

(2) A completed and signed VA Form 10-0103, Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, including, if desired, a request for advance payment of HISA benefits.

(3) A signed statement from the owner of the property authorizing the improvement or structural alteration to the property. The statement must be

notarized if the beneficiary submitting the HISA benefits application is not the owner of the property.

(4) A written itemized estimate of costs for labor, materials, permits, and inspections for the home improvement or structural alteration.

(5) A color photograph of the unimproved area.

(b) Pre-award inspection of site. The beneficiary must allow VA to inspect the site of the proposed improvement or structural alteration. VA will not approve a HISA application unless VA has either conducted a pre-award inspection or has determined that no such inspection is needed. No later than 30 days after receiving a complete HISA benefits application, VA will conduct the inspection or determine that no inspection is required.

(c) Incomplete applications. If VA receives an incomplete HISA benefits application, VA will notify the applicant of the missing documentation. If the missing documentation is not received by VA within 30 days after such notification, VA will close the application and notify the applicant that the application has been closed. The closure notice will indicate that the application may be re-opened by submitting the requested documentation and updating any outdated information from the original application.

(Authority: 38 U.S.C. 501, 1717)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0188.)

§§ 17.3121-17.3124 [Reserved]

§ 17.3125 Approving HISA benefits applications.

(a) Approval of application. VA will approve the HISA benefits application if:

- (1) The application is consistent with §§ 17.3100 through 17.3130, and
- (2) VA determines that the proposed improvement or structural alteration is reasonably designed to address the needs of the beneficiary and is appropriate for the beneficiary's home, based on documentation provided and/or through a pre-award inspection of the home.

(b) Notification of approval. No later than 30 days after a beneficiary submits a complete application, VA will notify the beneficiary whether an application is approved. The notification will:

- (1) State the total benefit amount authorized for the improvement or structural alteration.
- (2) State the amount of any advance payment, if requested by the beneficiary, and state that the advance payment must be used for the improvements or structural alterations detailed in the application. The notification will also remind beneficiaries receiving advance payment of the obligation to submit the request for final payment upon completion of the construction.
- (3) Provide the beneficiary with the notice of the right to appeal if they do not agree with VA's decision regarding the award.

(Authority: 38 U.S.C. 501, 1717, 7104)

§ 17.3126 Disapproving HISA benefits applications.

VA will disapprove a HISA benefits application if the complete HISA benefits application does not meet all of the criteria outlined in § 17.3125(a). Notification of the decision provided to the beneficiary will include the basis for the disapproval and notice to the beneficiary of his or her right to appeal.

(Authority: 38 U.S.C. 501, 7104)

§§ 17.3127-17.3129 [Reserved]

§ 17.3130 HISA benefits payment procedures.

(a) Advance payment. If the beneficiary has requested advance payment of HISA benefits in VA Form 10-0103, as provided in § 17.3120(a)(2), VA will make an advance payment to the beneficiary equal to 50 percent of the total benefit authorized for the improvement or structural alteration. VA will make the advance payment no later than 30 days after the HISA benefits application is approved. The beneficiary may receive only one advance payment for each approved HISA benefits application. A beneficiary must use the advance payment only for the improvement or structural alteration described in the application and must submit a final payment request, as defined in paragraph (b) of this section, to document such use after the construction is finished.

(b) Final payment request. No later than 60 days after the application is approved or, if VA approved an advance payment, no later than 60 days after the advance payment was made, the beneficiary must submit a complete final

payment request to VA for payment. The complete final payment request must include:

(1) A statement by the beneficiary that the improvement or structural alteration, as indicated in the application, was completed;

(2) A color photograph of the completed work; and

(3) Documentation of the itemized actual costs for material, labor, permits, and inspections.

(c) VA action on final payment request.

(1) Prior to approving and remitting the final payment, VA may inspect (within 30 days after receiving the final payment request) the beneficiary's home to determine that the improvement or structural alteration was completed as indicated in the application. No payment will be made if the improvement or structural alteration has not been completed.

(2) No later than 30 days after receipt of a complete final payment request, or, if VA conducts an inspection of the home under paragraph (c)(1) of this section, no later than 30 days after the inspection, VA will make a determination on the final payment request. If approved, VA will remit a final payment to the beneficiary equal to the lesser of:

(i) The approved HISA benefit amount, less the amount of any advance payment, or

(ii) The total actual cost of the improvement or structural alteration, less the amount of any advance payment.

(3) If the total actual cost of the improvement or structural alteration is less than the amount paid to the beneficiary as an advance payment, the beneficiary will reimburse VA for the difference between the advance payment and the total actual costs.

(4) After final payment is made on a HISA benefits application, the application file will be closed and no future HISA benefits will be furnished to the beneficiary for that application. If the total actual cost of the improvement or structural alteration is less than the approved HISA benefit, the balance of the approved amount will be credited to the beneficiary's remaining HISA benefits lifetime balance.

(d) Failure to submit a final payment request.

(1) If an advance payment was made to the beneficiary, but the beneficiary fails to submit a final payment request in accordance with paragraph (b) of this section within 60 days of the date of the advance payment, VA will send a notice to remind the beneficiary of the obligation to submit the final payment request. If the beneficiary fails to submit the final payment request or to provide a suitable update and explanation of delay within 30 days of this notice, VA may take appropriate action to collect the amount of the advance payment from the beneficiary.

(2) If an advance payment was not made to the beneficiary and the beneficiary does not submit a final payment request in accordance with paragraph (b) of this section within 60 days of the date the application was approved, the application will be closed and no future HISA benefits will be

furnished to the beneficiary for that application. Before closing the application, VA will send a notice to the beneficiary of the intent to close the file. If the beneficiary does not respond with a suitable update and explanation for the delay within 30 days, VA will close the file and provide a final notice of closure. The notice will include information about the right to appeal the decision.

(e) Failure to make approved improvements or structural alterations. If an inspection conducted pursuant to paragraph (c)(1) of this section reveals that the improvement or structural alteration has not been completed as indicated in the final payment request, VA may take appropriate action to collect the amount of the advance payment from the beneficiary. VA will not seek to collect the amount of the advance payment from the beneficiary if the beneficiary provides documentation indicating that the project was not completed due to the fault of the contractor, including bankruptcy or misconduct of the contractor.

(Authority: 38 U.S.C. 501, 1717)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0188.)

[FR Doc. 2013-27672 Filed 11/19/2013 at 8:45 am; Publication Date: 11/20/2013]