



This document is scheduled to be published in the Federal Register on 12/03/2014 and available online at <http://federalregister.gov/a/2014-28373>, and on FDsys.gov

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: Final rule.

SUMMARY: This rulemaking adopts as final, without change, a proposed rule creating regulations for the Home Improvements and Structural Alterations (HISA) benefits program. Through the HISA benefits program, VA provides 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. This rulemaking codifies regulations governing the HISA benefits program and incorporates the increase in HISA benefits authorized by the 2010 Act.

DATES: Effective Date: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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: On November 20, 2013, VA published a proposed rule in the Federal Register (78 FR 69614) that would create regulations governing the HISA benefits program. VA invited the public to submit comments on the proposed rulemaking on or before January 21, 2014. VA received comments from four members of the public. Based on the rationale in the proposed rule and in this document, VA is adopting the proposed rule, with no changes.

Section 1717(a)(1) of title 38, United States Code, 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.

VA proposed to establish regulations to govern the HISA benefits program and to codify an increase in HISA benefit limits enacted in the 2010 Act, Public Law 111-163. Additionally, VA proposed 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.

During the comment period, VA received four public comments. A consideration of these comments follows.

One commenter recommended “more restrictions on contractors and vendors with more bids coming from the community.” VA believes the process we proposed is consistent with this recommendation because veterans will have complete control over the choice of contractors who complete the improvements or structural alterations to their homes. VA will no longer require bids from multiple contractors, nor will VA be involved in reviewing these bids as part of the application, under the new HISA application and approval procedures in §§ 17.3120 and 17.3125. The commenter may have been making reference to geographic restrictions on contractors by recommending more bids from the community. This regulation puts no geographic restrictions on the contractors that a veteran can choose for a HISA project. The same commenter recommended that contractors provide “more line items with actual costs listed.” VA will require an itemized estimate of costs for the improvement or structural alteration under § 17.3120(a)(4). Because veterans have full control over the selection of their contractors, they may request additional details about the costs of a project as they wish. VA makes no changes to the regulation based on this comment.

Another commenter recommended that HISA applications be evaluated by occupational therapists to determine whether lower-cost options to accommodate veterans’ needs have been evaluated, and to determine exactly what modifications are required to meet veterans’ needs. The commenter notes that occupational therapists are trained to determine whether certain structural adaptations are appropriate for a specific space and to assess adaptive

equipment, home safety, and environmental modifications. VA believes that these regulations and HISA program policies are consistent with this recommendation. VA medical facilities employ occupational therapists, physical therapists, and kiniseiotherapists, as well as blind rehabilitation specialists, who evaluate veterans applying for HISA benefits. This evaluation typically occurs when a physician documents within the veteran's prescription that there is a clinical need for that type of an evaluation. These evaluations are usually performed at the local VA medical facility, though some are performed in veterans' homes, depending on individual veterans' needs and the availability of certain therapeutic evaluation facilities at VA medical facilities. The same commenter expressed some concern over prosthetics program representatives inspecting HISA applicants' homes, as in §§ 17.3120(b) and 17.3130(c)(1), because they do not have the same training and expertise as occupational therapists. This comment does not reflect VA's procedures. Prosthetics representatives will only inspect veterans' homes to ensure that the improvements or structural alterations proposed in a beneficiary's application are feasible, or that they have been completed as described in the application so VA can approve the final grant payment. These inspections relate to administration of the grant and protecting grant funds. Prosthetics representatives will not be inspecting homes to make decisions about whether the improvements or structural adaptations will provide medical benefits to the veteran, because those determinations are made by VA's clinical staff, such as physicians,

kinesiotherapists, and occupational and physical therapists. VA makes no changes based on this comment.

Two commenters disagreed with VA's statement in the proposed rule that the HISA benefit is not a construction benefit and that VA does not have any responsibility for ensuring the structural integrity or code compliance of alterations. VA stated in the proposed rule that our inspections of HISA grant sites or construction under §§ 17.3120(b) and 17.3130(c)(1) should not be confused with, or interpreted as, code enforcement or structural integrity inspections. The commenters recommended that VA inform HISA beneficiaries about existing construction standards so beneficiaries can provide them to their contractors. Specifically, the commenters recommend referring beneficiaries to the accessibility guidelines in the Americans with Disabilities Act, to section 504 of the Rehabilitation Act, or recommends that VA give beneficiaries the Specially Adapted Housing grant construction manual. The Specially Adapted Housing (SAH) program is administered by the Veterans Benefits Administration under 38 U.S.C. 2101 through 2107 and is distinct from the HISA program. This recommendation reflects VA's regulations and HISA policy, in part. VA prescribes the specific structural adaptations or improvements that veterans need before veterans apply for a HISA grant. That process ensures that the HISA grant provides veterans with resources that are suited to their abilities. When appropriate, prosthetics representatives may refer HISA beneficiaries and contractors to the SAH program minimum property requirements for construction projects, if the type of improvement or structural alteration being done with HISA

grant funds calls for such guidance. Issues of code compliance and the structural soundness of construction, however, are different. VA does not have expertise in the building codes of each jurisdiction in which HISA benefits are used. Contractors performing the work on HISA grants must take responsibility for the structural soundness of the construction work they perform and for complying with their local building codes, and HISA grant funds may be used to ensure that structural alterations or improvements are sound and comply with building codes. We stress that VA's inspections are for the administrative purposes of ensuring that an improvement or structural alteration detailed in an application may be completed at the property, or that a project has been completed and therefore VA should make a final payment. VA makes no changes to the regulation based on these comments.

One commenter objected to the proposed payment process, stating that it would add more steps to the application process and increase the risk of fraud. The commenter stated that veterans would need to submit additional forms for advance payments, then submit additional forms for final payment, instead of VA paying a sum directly to the vendor. VA disagrees with the commenter's characterization of the proposed rule. Requests for advance payments of HISA grant funds will be included in the same application that all veterans must submit to apply for a HISA grant under proposed § 17.3120(a)(2), so there would be no additional paperwork required to request advance payments. Veterans are currently required to submit documentation to receive final payments, and will continue to be required to do so under § 17.3130(b); there is, therefore, no

additional paperwork associated with that requirement. VA believes that the process we have proposed for veterans to request advance payments of HISA grant funds creates minimal additional burden for veterans, and that the benefits of making these funds available earlier in the process will outweigh any burden. The same commenter stated that the proposed rule is unclear on whether prepayments would be made to the veteran or the contractor. The commenter said that these prepayments would increase the risk of funds being lost or abused, apparently if the veteran receives the advanced funds, or would increase the risk of jeopardizing grant funds if a contractor is unreliable, apparently if the advance funds are paid directly to the contractor. The commenter believes these risks could lead to increased legal fees for VA if funds are abused, apparently to recover grant funds from veterans or contractors who have misused prepayments. VA disagrees that the process we have proposed for making prepayments creates significant increased risks of fraud or abuse. We do not agree that veterans cannot be trusted to receive funds directly as the HISA grant beneficiaries, nor do we believe that directly paying veterans creates any greater (or less) likelihood of misuse than directly paying the contractor or vendor who performs the work. VA acknowledged in the proposed rule that making advance payments could lead to abuse. The application form, VA Form 10-0103, will require beneficiaries who request advance payments to commit to using advance funds specifically for the HISA project, and to submit a request for final payment upon completion the project. VA would have legal authority to take action against veterans in such cases. If a veteran who receives an advance payment

of HISA funds pays a contractor to perform work, but the contractor fails to do so, VA will not take action against the veteran. With these safeguards, we think there is minimal risk of fraud, abuse, or increased fees related to legal actions over advance payments. The commenter recommended, apparently as an alternative to the advance payment process, that VA dedicate a prosthetics representative to each HISA grant to help veterans complete the application process instead. VA prosthetics representatives do review each HISA application and provide assistance to veterans as needed to complete the application process. VA makes no changes based on this comment.

VA received several comments recommending that we increase the deadline for submitting a final payment request under § 17.3130(b) from 60 days to at least 90 days, with one commenter recommending 120 days. Based on our administration of the program, we believe that 60 days is sufficient time to complete a HISA grant project. By the time VA approves the HISA grant application or issues an advance payment, most of the project plan is already in place: the needed improvement or structural alteration must be prescribed and the contractor must be identified so the veteran could submit an itemized estimate of costs with their complete application under § 17.3120. Most projects that use HISA grants should be able to be completed within 60 days of securing the information in the HISA grant application. There is no penalty if the project extends beyond 60 days, either; the regulation at § 17.3130(d) describes the process by which VA will remind veterans to submit a final payment request or request more time to complete the application. In this manner, VA has given

veterans flexibility to complete a HISA project, while also providing a reasonable deadline for ensuring that the HISA program can be administered efficiently and that government funds distributed as advance payments are being used properly. VA makes no changes based on these comments, but makes on technical correction. The undesignated center heading and §§ 17.3100 through 17.3130 are added following § 17.2000, and not following § 17.1008 as written in the proposed rule.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following amended information collection requirements. HISA beneficiaries will be required to submit VA Form 10-0103 (which OMB previously approved and assigned OMB control number 2900-0188), 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. As required by the Paperwork Reduction Act of 1995, VA has submitted these information collections to OMB for its review. OMB approved the amended information collection requirements associated with the final rule under existing OMB control number 2900-0188.

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 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 5 U.S.C. 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 final rule 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://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

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.

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 November 24, 2014, 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 26, 2014.

William F. Russo,
Acting 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 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 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 paragraph (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 requirement in this section under control number 2900-0188.)

[FR Doc. 2014-28373 Filed 12/02/2014 at 8:45 am; Publication Date: 12/03/2014]