



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 9

RIN 2900-AQ12

Veterans' Group Life Insurance Increased Coverage

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: Current statutory provisions provide Veterans' Group Life Insurance (VGLI) insureds under the age of 60 with the opportunity to increase their VGLI coverage by \$25,000 not more than once in each 5-year period beginning on the 1-year anniversary of the date a person becomes insured under VGLI. The Department of Veterans Affairs (VA) proposes to amend its VGLI regulations to establish a permanent regulatory framework for such elections of increased coverage. The proposed rule would also clarify that coverage increases in an amount less than \$25,000 are available only when existing VGLI coverage is within \$25,000 of the Servicemembers' Group Life Insurance current maximum of \$400,000, and any increases of less than \$25,000 must be only in an amount that would bring the insurance coverage up to the statutory maximum.

DATES: Comment Date: Comments 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 (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AQ12 Veterans’ Group Life Insurance Increased Coverage.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Karen Naccarelli, Department of Veterans Affairs Insurance Center (310/290B), P.O. Box 13399, Philadelphia, PA 19101, (215) 381-3029. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Before the passage of the Veterans' Benefits Act of 2010, Pub. L. 111-275, § 404, 124 Stat. 2864, 2879-2880 (2010), the maximum amount of VGLI coverage available to a former member (also referred to as “the insured” hereafter) was limited to the amount of Servicemembers’ Group Life Insurance (SGLI) coverage in force at the time of separation from service. See 38 U.S.C. 1977(a)(1). Section 404 of the Veterans' Benefits Act of 2010 amended the governing

statute, 38 U.S.C. 1977, to authorize insureds who are under 60 years of age and who have less than the statutory maximum of SGLI coverage to elect in writing to increase coverage by \$25,000 not more than once in each 5-year period beginning on their 1-year VGLI coverage anniversary date. Section 404 enables former members to keep pace with changing economic conditions by purchasing adequate amounts of life insurance to protect their families. Section 404 added to 38 U.S.C. 1977(a) a new paragraph (3), which took effect April 11, 2011. To promptly implement this statutory change, VA adopted interim procedures for increasing VGLI coverage. See “Servicemembers’ and Veterans’ Group Life Insurance Handbook,” ch. 12, para. 12.01, on the VA Insurance website at http://www.benefits.va.gov/INSURANCE/resources_handbook_ins_chapter12.asp (outlining the interim process). Since the 2011 change in law, 70,569 VGLI insureds have participated in VGLI increased coverage opportunities as of the end of calendar year 2016, electing additional coverage in the amount of \$1,764,710,000. The proposed regulation is intended to establish a permanent regulatory framework for affording additional VGLI coverage under section 404.

VA proposes to exercise the Secretary’s authority under 38 U.S.C. 501 and amend its regulations to establish a permanent regulatory framework for affording VGLI insureds the opportunity to purchase increased coverage pursuant to 38 U.S.C. 1977(a)(3). Under 38 U.S.C. 1977(b)(2), VGLI is only renewable on a “five-year term basis,” while subsection (a)(3) provides for elections of increased coverage of \$25,000 not more than once in each 5-year period beginning on the 1-year anniversary of the date a person becomes insured under VGLI. See 38 U.S.C. 1977. Because the

statutory language does not specify the invitation period(s) for VGLI insureds to elect increased coverage, VA proposes to amend 38 CFR 9.2 to address the gap. Proposed § 9.2(b)(5) would provide that the VGLI insured's first opportunity to increase coverage would be on the one-year VGLI coverage anniversary date, the earliest date permissible under the authorizing statute. The insured could subsequently elect to increase coverage on the 5-year anniversary date from the first VGLI coverage increase election opportunity and on each 5-year anniversary from the date of the last VGLI coverage increase opportunity thereafter.

The proposed amendment of § 9.2 is consistent with 38 U.S.C. 1977(a)(3), which states that the insured has the opportunity to increase coverage “[n]ot more than once in each five-year period beginning on the 1-year anniversary of the date a person becomes insured under Veterans' Group Life Insurance.” As stated, the authorizing statute is silent about if and when an insured will be notified about the opportunity to increase coverage. Accordingly, VA's proposed regulation is intended, in part, to address this gap in the statutory language. Specifically, the proposed regulation would provide that after VGLI enrollment, the insurer will invite insureds to increase coverage not less than 120 days prior to the 1-year anniversary from initial VGLI coverage and not less than 120 days prior to each 5-year anniversary date from the date of the last VGLI coverage increase election opportunity, until the former member has elected the SGLI statutory maximum (currently \$400,000) or has attained the age of 60 years, whichever occurs first.

In addition, VA seeks to make clear in this proposed rule that insureds must elect increased coverage within 120 days prior to their VGLI one-year anniversary date

and/or within 120 days prior to each subsequent 5-year anniversary date from the last VGLI coverage increase election opportunity. VA has determined that the 120-day period is a reasonable period of time for insureds to review their financial needs and make informed decisions regarding whether to request additional coverage. As such, the proposed regulation would allow VGLI insureds to elect increased coverage within 120 days prior to the 1-year anniversary date and within 120 days prior to each 5-year anniversary date from the date of the last VGLI increase opportunity as long as the insured remains eligible to do so, i.e., is under the statutory coverage limit and under 60 years of age.

For example, if a former member purchased \$300,000 in VGLI coverage effective April 11, 2017, the former member would be eligible to request an additional \$25,000 of VGLI coverage beginning 120 days prior to April 11, 2018. The increased coverage would be effective April 11, 2018. The next opportunity to increase coverage would be April 11, 2023, the first 5-year anniversary date from the last VGLI coverage increase election opportunity. Subsequently, the former member would have the opportunity to buy an additional \$25,000 in VGLI coverage once every five years for as long as the former member was under 60 years of age and held \$400,000 or less in VGLI coverage.

See 38 U.S.C. 1977(a)(3).

The proposed regulation would afford the insured the earliest opportunity to increase coverage permitted under the statute, namely on the one-year anniversary after coverage begins and on each subsequent 5-year anniversary date from the last VGLI increase election opportunity. See 38 U.S.C. 1977(b)(2). Moreover, the proposed amendment would ensure that such increases in coverage would occur during

predictable periods. This would allow both the insured and the insurer to plan for any potential changes in the in-force coverage amount and the corresponding premiums. This aspect of predictability about the timing of coverage elections would support the goal of managing the VGLI program based on sound actuarial principles, while also affording insureds ample opportunities to elect increased coverage if they choose to do so. Under the proposed regulatory amendment, insureds could make assessments about future financial plans and the insurer could apply the increased coverage amount(s) at predictable intervals, namely at the time of the first year anniversary date after coverage began or at the time of each subsequent 5-year anniversary date(s) of the last VGLI coverage increase election opportunity. The insurer would apply any increased coverage from the date of the 1-year anniversary and/or from any 5-year anniversary date from the most recent VGLI coverage increase election opportunity.

By limiting opportunities to increase VGLI coverage to the initial, 1-year coverage anniversary date and every 5-year anniversary date of the last VGLI coverage increase election opportunity thereafter, VA would provide insureds the opportunity to meet their financial needs while mitigating the potentially negative impact of adverse selection in the VGLI program. Adverse selection occurs when individuals use their superior knowledge of their insurability to minimize the period of time over which they are likely to pay premiums for coverage. Such a practice unfairly shifts the premium paying burden to other individuals paying premiums for coverage over a longer period of time and potentially undermines the financial health of the program to the detriment of all insureds. Insurance programs rely on a pooling of risks, and premium rates are set according to the expected mortality of the insurance pool. If a disproportionate number

of insureds in substandard health enter the program or carry higher coverage amounts than healthier individuals in the program, the increased mortality experience will exceed that upon which the premium rates are based and could impact the program negatively by driving up the cost of premiums for all program participants. Consistent with industry practices designed to keep premium rates affordable, insurance providers typically limit changes in policies to certain defined periods of time, such as open seasons or during renewal periods. By limiting VGLI coverage changes only at established intervals, such as the initial, 1-year anniversary from the coverage date and each 5-year anniversary date from the last VGLI coverage increase election opportunity thereafter, VA would ensure that VGLI insureds have ample opportunity to increase coverage in a manner that is both consistent with industry practice and beneficial to insureds.

As it relates to the amount of increased coverage elected at one time, the statutory language of 38 U.S.C. 1977(a)(3) provides that an increase in coverage is generally allowable in intervals of \$25,000; however, the statute is silent as to the options available to VGLI insureds who have coverage of more than \$375,000, i.e., within less than \$25,000 of the current statutory maximum. To address this gap in the statutory language, VA's proposed rule would also clarify that increases of less than \$25,000 shall be permitted only when VGLI coverage in force is within less than \$25,000 of the statutory maximum. In such circumstances, coverage increases in an amount less than \$25,000 would only be allowed in the amount required to increase coverage up to the current statutory maximum of \$400,000. For example, if an insured has coverage of \$380,000, the proposed rule would permit an increase of \$20,000 in order to bring the insured's coverage up to the current SGLI maximum of \$400,000. If

not for this exception, those within less than \$25,000 of the statutory maximum coverage amount would be forever barred from increasing their coverage because doing so would result in coverage in excess of the SGLI maximum of \$400,000, which is not permitted by law. VA's proposed rule would seek to avoid this harsh result and make permanent the current, interim policy that allows insureds with more than \$375,000 coverage the opportunity to elect additional coverage up to the statutory maximum. There is flexibility in this area because 38 U.S.C. 1977(b)(5) authorizes the Secretary to set terms and conditions for VGLI that he determines to be reasonable and practicable. The exception outlined above is both permissible within the scope of the statute and furthers its intent to allow up to \$400,000 in VGLI coverage.

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 proposed rule would have no such effect on state, local, and tribal governments or the private sector.

Paperwork Reduction Act

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

Executive Orders 12866, 13563, and 13771

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://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date." This proposed rule is not expected to be an EO 13771 regulatory action because this proposed rule is not significant under EO 12866.

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 directly affect only individuals and would not directly affect small entities. 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.

Catalog of Federal Domestic Assistance

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

List of Subjects in 38 CFR Part 9

Life insurance; Military personnel; Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jacquelyn Hayes-Byrd, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on February 23, 2018, for publication.

Dated: April 23, 2018

Jeffrey M. Martin
Impact Analyst
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR Part 9 as follows:

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

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

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

2. In § 9.2, add new paragraph (b)(5) to read as follows:

§ 9.2 Effective date; applications.

* * * * *

(b) * * *

(5) Pursuant to 38 U.S.C. 1977(a)(3), former members under the age of 60 can elect to increase their Veterans’ Group Life Insurance coverage by \$25,000, up to the existing Servicemembers’ Group Life Insurance maximum. The insured’s first opportunity to elect to increase coverage is on the one-year Veterans’ Group Life Insurance coverage anniversary date. Thereafter, the insured could elect to increase coverage on the five-year anniversary date of the first VGLI coverage increase election opportunity and subsequently every five years from the anniversary date of the insured’s last VGLI coverage increase election opportunity. Increases of less than \$25,000 are only available when existing Veterans’ Group Life Insurance coverage is within less than \$25,000 of the Servicemembers’ Group Life Insurance maximum and any increases of less than \$25,000 must be only in the amount needed to bring the insurance coverage up to the statutory maximum allowable amount of Servicemembers’

Group Life Insurance. The eligible former members must apply for the increased coverage through the administrative office, within 120 days of invitation prior to the initial one-year anniversary date or within 120 days prior to each subsequent five-year coverage anniversary date from the first VGLI coverage increase election opportunity. The increased coverage will be effective from the anniversary date immediately following the election.

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