



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AQ10

Automatic Burial Benefits for Previously Unestablished Surviving Spouses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulation governing persons who may receive VA burial benefits on behalf of a deceased veteran. As amended, the regulation reflects VA's current policy of paying an automatic burial benefit to surviving spouses who were not established in VA systems as a veteran's spouse at the time of the veteran's death. The intended effect of this amendment is to ensure that a veteran's surviving spouse receives burial benefits to which he or she is entitled at the earliest possible time.

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

FOR FURTHER INFORMATION CONTACT: Julieann (Jewels) Brantseg, Pension Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 632-8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This final rule amends the VA regulation regarding persons who may receive burial benefits, paid by the Veterans Benefits Administration (VBA), to ensure that the regulation properly reflects current VBA policy.

On June 6, 2014, VA published in the Federal Register final burial regulations that permit VBA to automate certain burial allowance payments, pay flat-rate burial and plot or interment allowances, and establish priority of payments to certain survivors and estate representatives. Burial Benefits, 79 FR 32653. The revised burial regulations became effective July 7, 2014. See 79 FR 32653.

Burial regulations at 38 CFR 3.1700 through 3.1713 streamlined VBA's burial benefits program to ensure that VBA quickly, efficiently, and accurately delivers benefits to survivors and other individuals who incur the cost of a veteran's burial and funeral. The regulations established rules for the automatic payment of burial allowances that facilitated payment to many surviving spouses at the time VA updates its computer system to reflect the veteran's date of death. Other individuals seeking reimbursement for burial expenses are paid on a first-to-file basis.

On December 16, 2016, Congress enacted Public Law 114-315, Sec. 101, which authorized VA to pay benefits under 38 U.S.C. chapters 13 and 15 and sections 2302, 2307, and 5121 "to a survivor of a veteran who has not filed a formal claim if [VA] determines that the record contains sufficient evidence to establish the entitlement of the survivor to such benefits." See 38 U.S.C. 5101(a)(1)(B). This new statutory provision essentially affirmed VA's practice of providing automatic burial payments to surviving spouses under the current regulation. This rule brings about a procedural change that would allow VA to provide automatic burial payments to other surviving spouses whom VA determines are entitled to such benefits based on the record at the time VA updates its computer system to reflect the veteran's death, which we believe is consistent with the intent of section 5101(a)(1)(B).

Therefore, at this time, we amend 38 CFR 3.1702, which pertains to persons who may receive burial benefits and the priority of payments. The change in this final rule reflects the intent of the original amendments – to expedite the payment of these small, one-time benefit payments to survivors who generally have an immediate need for supplemental financial assistance after the veteran's death.

We amend § 3.1702(a), which permits VA to make automatic burial benefit payments to a deceased veteran's surviving spouse when VA is able to determine eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death. We amend paragraph (a) to specifically state that a surviving spouse may receive an automatic burial benefit under certain circumstances, whether or not previously established as a dependent spouse on the veteran's compensation or pension award at the time of the veteran's death. There are several reasons why VA systems may not reflect the existence of a spouse at the time of a veteran's death even though a spouse does, in fact, exist. This could occur if a veteran was receiving disability compensation but was rated less than 30-percent disabled under the rating schedule. Such veterans with a service-connected disability rating of less than 30 percent are not entitled to additional compensation for spouses. See 38 U.S.C. 1115. It could also occur if a veteran has never claimed his or her spouse as a dependent. In addition, VA systems could show a spouse who is not the current spouse. This could occur if VA was never notified that the veteran's dependency status had changed. The amended regulation clarifies that VBA may pay the automatic burial benefit to an eligible surviving spouse when, at the time VA updates its computer system to reflect the veteran's date of death, VA knows of or is informed of the

existence of the surviving spouse, can establish the individual's dependent status as the veteran's surviving spouse in accordance with § 3.204 (when applicable), and is able to determine burial benefits eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death.

At this time, VA systems only permit automatic payments to surviving spouses. In the future, VA may consider making automatic payments to other persons.

Administrative Procedure Act

This rule reflects VA's current practice and effectuates a procedural change to VA's final burial regulations published on June 6, 2014, to establish a uniform process for providing automatic burial payments to all surviving spouses. The lack of documentation of a dependent spouse in VA's system at the time of the veteran's death should not impose additional procedural requirements on those individuals when applying for burial benefits established under the regulations.

This rule does not make any substantive policy change or impose new rights, duties, or obligations on affected individuals but simply reflects VA's existing policy and effectuates a procedural change to VA's final burial regulations published on June 6, 2014, to ensure uniform procedures for eligible surviving spouses to receive burial allowance payments faster. In other words, this rule does not expand the class of individuals eligible for burial allowance payments but merely ensures faster payment of the burial allowance to surviving spouses who otherwise would have to submit an application for the burial allowance. Also, this rule does not adversely impact surviving spouses who would have been eligible for automatic payment under the 2014

amendments; we contemplate that all such individuals would also qualify for such payments under this rule. As a rule of agency procedure or practice, this rule is exempt under 5 U.S.C. 553(b)(A) from the prior notice-and-comment requirements of 5 U.S.C. 553. Also, this rule is exempt from the delayed effective date requirement under 5 U.S.C. 553(d) because it is a procedural rule and, alternatively, because this rule is beneficial to surviving spouses at a time of need, pursuant to 5 U.S.C. 553(d)(3), VA finds good cause to make the amendments effective on the date of publication.

Paperwork Reduction Act

Section 3.1703 contains an information collection approved by the Office of Management and Budget (OMB) under OMB control number 2900-0003. This final rule does not contain any provisions constituting an additional collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) and does not alter the existing information collection contained in § 3.1703; rather, the final rule merely provides that VA may grant benefits in certain cases even if the claimant has not filed an application under the existing information collection.

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,” which requires review by OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s website at <http://www.va.gov/orpm> by following the link for “VA Regulations Published from FY 2004 through Fiscal Year to Date.” This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

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.

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 directly affect any small entities; only individuals will be directly affected. 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. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this rulemaking is 64.101, Burial Expenses Allowance for Veterans.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Signing Authority

The Secretary of Veterans Affairs 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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 6, 2018, for publication.

Dated: August 6, 2018

Jeffrey M. Martin
Impact Analyst
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For reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

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

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

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

2. Amend § 3.1702 by revising paragraph (a) to read as follows:

§ 3.1702 Persons who may receive burial benefits; priority of payments.

(a) Automatic payments to surviving spouses of eligible deceased veterans. (1)

On or after July 7, 2014, VA may automatically pay a burial benefit to an eligible veteran's surviving spouse, whether or not previously established as a dependent spouse on the deceased veteran's compensation or pension award, when VA knows of or is informed of the existence of the surviving spouse, can establish the surviving spouse's relationship under § 3.204 (when applicable), and is able to determine burial benefits eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death.

(2) VA may grant additional burial benefits, including the plot or interment allowance, reimbursement for transportation, and the service-connected burial allowance under § 3.1704, to the surviving spouse or any other eligible person in

accordance with paragraph (b) of this section and based on a claim described in
§ 3.1703.

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[FR Doc. 2018-17274 Filed: 8/10/2018 8:45 am; Publication Date: 8/13/2018]