

**38 CFR Part 71****[Docket No. VA- 2021-VHA-0018]****RIN 2900-AR28****Extension of Program of Comprehensive Assistance for Family Caregivers****Eligibility for Legacy Participants and Legacy Applicants****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, an interim final rule that amended VA's regulations governing the Program of Comprehensive Assistance for Family Caregivers (PCAFC) and extended the transition period for legacy participants, legacy applicants, and their Family Caregivers (the legacy cohort) through September 30, 2025. This final rule will further extend the transition period for the legacy cohort through September 30, 2028.

DATES: This rule is effective September 30, 2025.

FOR FURTHER INFORMATION CONTACT: Colleen Richardson, Executive Director, Caregiver Support Program, Veterans Health Administration, (202) 461-7337.

SUPPLEMENTARY INFORMATION:Executive Summary

This final rule provides an additional three-year extension for the transition period for the legacy cohort, that is through September 30, 2028, and responds to comments received on two prior interim final rules that were previously published related to the transition period for the legacy cohort. VA is making this change to ensure continued eligibility for individuals who were deemed eligible for PCAFC under prior criteria while VA continues to consider regulatory changes, including with respect to the eligibility criteria that became effective on October 1, 2020, as discussed in a December 6, 2024,

proposed rule. 89 Federal Register (FR) 97404. As VA explained in 2020 when establishing the transition period for the legacy cohort, individuals within the legacy cohort may have been participating in PCAFC for many years and, through no fault of their own, have come to rely upon the stipend and other PCAFC benefits. See 85 FR 46226, at 46253 (July 31, 2020). VA believes it would be unjust for the transition period for the legacy cohort to conclude while VA is still working to identify and begin implementing changes related to PCAFC, including the eligibility criteria.

Background

As originally codified in 2010, section 1720G of title 38, United States Code (U.S.C.), required VA to establish PCAFC for Family Caregivers of eligible veterans who have a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001. Section 101 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law (Pub. L.) 111-163, 124 Stat. 1130 (2010). VA implemented PCAFC through its regulations in part 71 of title 38, Code of Federal Regulations (CFR).

In 2018, section 1720G was amended by expanding PCAFC to Family Caregivers of eligible veterans who have a serious injury incurred or aggravated in the line of duty before September 11, 2001, establishing new benefits for designated Primary Family Caregivers of eligible veterans, and making other changes affecting program eligibility and VA's evaluation of PCAFC applications. Section 161 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (VA MISSION Act of 2018), Pub. L. 115-182, 132 Stat. 1393 (2018).

Subsequently, through regulations, VA amended the PCAFC eligibility criteria, identified a legacy cohort (i.e., legacy applicants, legacy participants, and their Family Caregivers, as those terms are defined in 38 CFR 71.15) who were approved for

PCAFC under the previous eligibility criteria, and created a one-year transition period through September 30, 2021, whereby the legacy cohort would continue to remain eligible for PCAFC and continue to receive benefits in accordance with 38 CFR 71.40 while they were reassessed under the new eligibility criteria. 85 FR 46226.

First and Second PCAFC Extension for Legacy Cohort

On September 22, 2021, VA published an interim final rule (First PCAFC Extension for Legacy Cohort) that extended the one-year transition period for the legacy cohort for one additional year through September 30, 2022. 86 FR 52614. VA continued to reassess the legacy cohort during this time. However, on March 25, 2022, the U.S. Court of Appeals for the Federal Circuit issued a decision that set aside certain PCAFC criteria established in the July 31, 2020, rulemaking, resulting in the need for VA to repeat certain reassessments of the legacy cohort to account for the Court's interpretation. *Veteran Warriors, Inc. v. Sec'y of Veterans Affairs*, 29 F.4th 1320 (Fed. Cir. 2022) (*Veteran Warriors*). In light of the *Veteran Warriors* decision, VA published a second interim final rule (Second PCAFC Extension for Legacy Cohort) on September 21, 2022, that extended the transition period and timeline for VA to complete reassessments of the legacy cohort by three additional years through September 30, 2025. 87 FR 57602.

VA provided a 60-day comment period for the First PCAFC Extension for Legacy Cohort, which ended on November 22, 2021. Four comments were received. VA provided a 60-day comment period for the Second PCAFC Extension for Legacy Cohort, which ended on November 21, 2022. Eleven comments were received. In this rulemaking, VA responds to comments received on the First and Second PCAFC Extension for Legacy Cohort and further extends the transition period by an additional three-year period, that is through September 30, 2028.

VA notes that on December 6, 2024, VA published a proposed rule (New Amendments to PCAFC) that, among other changes, proposed to further amend the eligibility criteria for PCAFC and proposed to further extend the transition period for the legacy cohort and the timeline for conducting necessary reassessments for members of the legacy cohort to ensure they could be reassessed under the proposed new eligibility criteria, once finalized. 89 FR 97404. VA received 842 comments on the New Amendments to PCAFC proposed rule, a significant number of which related to the proposed extension of the transition period for the legacy cohort. However, because those comments are specific to the New Amendments to PCAFC proposed rule, they will not be addressed in this final rule.

Response to Comments

As discussed, the First and Second PCAFC Extension for Legacy Cohort extended the transition period during which the legacy cohort could be reassessed for continued eligibility for PCAFC. While the Second PCAFC Extension for Legacy Cohort also made non-substantive technical amendments to the regulations, neither the First nor Second PCAFC Extension for Legacy Cohort interim final rules included substantive regulatory changes other than extending the transition period for the legacy cohort. Public comments addressing other issues, such as the eligibility criteria in the July 31, 2020, rulemaking and substantive changes to eligibility criteria based on *Veteran Warriors* are outside the scope of the First and Second PCAFC Extension for Legacy Cohort. The only comments within the scope of this rulemaking are those that specifically addressed whether and for how long the transition period for the legacy cohort should be extended.

Many of the comments received pursuant to the First and Second PCAFC Extension for Legacy Cohort raised broader issues related to PCAFC and are therefore outside the scope of this rulemaking. These comments raised concerns with the July 31,

2020, rulemaking, such as a belief that the final rule added additional restrictions to eligibility and that the changes negatively impacted the legacy cohort. Other comments raised concerns related to perceived inequity between pre- and post-9/11 veterans; stipend levels and rate calculations; the application form for PCAFC (VA Form 10-10CG); the effect of *Veteran Warriors* and the need to issue new regulations; the appeals process for PCAFC decisions; and the need for a formalized period for the pause on discharges and reductions for PCAFC participants who are not in the legacy cohort. Additional commenters shared their personal experiences with PCAFC and other expressed concerns with VA health care generally. As these comments were outside the scope of this rulemaking, in this final rule, VA makes no changes based on these comments and does not respond to the broader issues raised by these commenters.

VA received two comments pursuant to and within the scope of the First PCAFC Extension for Legacy Cohort that supported extending the transition period. One comment advocated for VA to prioritize new PCAFC applicants and stated that members of the legacy cohort should continue to stay in the program unless their caregiver support coordinator feels they are no longer qualified under the revised criteria or they decide to stop participating. Another comment supported the extension to provide additional time for VA to complete reassessments of the legacy cohort and indicated that “[s]etting a single, specific date when all the reassessments become effective is . . . fair and appropriate and gives veterans and their caregivers time to prepare for any changes in their status and/or stipend.” VA takes note of the commenters’ desire for continued eligibility for the legacy cohort and their support for extending the transition period. VA believes that these commenters’ reasons for supporting a one-year extension, such as providing the legacy cohort additional time to prepare for potential changes to their eligibility and/or stipend, also support an additional

three-year extension of the transition period for the legacy cohort, that is through September 30, 2028.

VA received three comments pursuant to and within the scope of the Second PCAFC Extension for Legacy Cohort that supported the three-year extension of the transition period for the legacy cohort through September 30, 2025. These commenters stated that the additional three-year period would mitigate negative impacts and ease the emotional and financial burden on the legacy cohort while providing time for VA to make meaningful adjustments to PCAFC eligibility. VA believes that these commenters' reasons for supporting the three-year extension also support an additional three-year extension of the transition period for the legacy cohort, that is through September 30, 2028.

Additionally, VA received one comment pursuant to and within the scope of the Second PCAFC Extension for Legacy Cohort that stated that this rule is a major rule and requires a proposed rule instead of an interim final rule. VA clarifies for the commenter that the Office of Information and Regulatory Affairs (OIRA) determined that both the First and Second PCAFC Extension for Legacy Cohort were not major rules under the Congressional Review Act (5 U.S.C. 804(2)). To the extent that the commenter is referring to the determination by OIRA that the Second PCAFC Extension for Legacy Cohort is a significant regulatory action under Executive Order 12866, VA clarifies that there is no prohibition against a finding of good cause to waive prior notice and opportunity for public comment for a significant regulatory action. Additionally, while the Second PCAFC Extension for Legacy Cohort was not promulgated as a proposed rule, VA invited public comments on the amendments during a 60-day comment period and committed to fully consider and address comments received. 87 FR 57608. VA refers the commenter to the Second PCAFC Extension for Legacy Cohort for a detailed discussion on VA's determination that there was good cause to publish the Second

PCAFC Extension for Legacy Cohort as an interim final rule under the Administrative Procedure Act. Id. at 57607-08. VA does not make any changes to the rule based on this comment.

Changes to 38 CFR Part 71

In this final rule, VA is making changes to the Second PCAFC Extension for Legacy Cohort to extend the transition period for the legacy cohort for an additional three years through September 30, 2028. As mentioned previously, in the New Amendments to PCAFC proposed rule, VA proposed additional changes to PCAFC, including changes to certain eligibility criteria. Among the changes proposed, VA proposed to extend the transition period of the legacy cohort to allow VA time to conduct reassessments of the legacy cohort under any new criteria that take effect as part of that rulemaking. 89 FR 97405. VA received 842 comments on the New Amendments to PCAFC proposed rule and due to the volume and thoroughness of the comments, VA determined it is not feasible to publish a New Amendments to PCAFC final rule and have such changes become effective prior to the end date of the current transition period for the legacy cohort, that is, on September 30, 2025. Therefore, VA believes it is necessary to extend the transition period for the legacy cohort by three years to ensure there is no change in VA's treatment of the legacy cohort while VA reviews and considers all comments received from the New Amendments to PCAFC proposed rule related to the legacy cohort and prior to issuing the New Amendments to PCAFC final rule. Extending the transition period for the legacy cohort by three years ensures VA has sufficient time to issue a New Amendments to PCAFC final rule, which could include regulatory changes impacting the legacy cohort.

These changes are a logical outgrowth from the First and Second PCAFC Extension for Legacy Cohort. The First PCAFC Extension for Legacy Cohort extended the transition period for the legacy cohort by one year to provide additional time for VA

to complete their reassessments and ensure they were treated equitably. The Second PCAFC Extension for Legacy Cohort rulemaking provided a three-year extension to the transition period for the legacy cohort to ensure that members of the legacy cohort would be treated fairly as they were reassessed under the eligibility criteria applied by VA following *Veteran Warriors*. Providing an additional three-year extension will similarly ensure continuation of the transition period for members of the legacy cohort while VA considers amendments that could impact their eligibility pursuant to the New Amendments to PCAFC final rule – thereby ensuring equitable treatment for the duration of the transition period for PCAFC participants in the legacy cohort. These changes merely extend provisions established within the First and Second PCAFC Extension for Legacy Cohort and do not create any burdens or restrictions on members of the legacy cohort. See *Veterans Justice Grp. v. Sec'y of Veterans Affs.*, 818 F.3d 1336, 1343-45 (Fed. Cir. 2016) (holding that additional notice and opportunity for comment were not required where modifications contained in a final rule were a logical outgrowth of the proposed rule). Therefore, in this final rule, VA is amending references to the five-year transition period for the legacy cohort contained in 38 CFR 71.20, 71.30, and 71.40 to reflect the updated transition period, totaling eight years, through September 30, 2028.

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act (5 U.S.C. 804(2)) because it is likely to result in an annual effect on the economy of \$100 million or more. Although this regulatory action is a major rule under 5 U.S.C. 804(2), the Secretary of Veterans Affairs finds that good cause exists under the provisions of 5 U.S.C. 808(2) to forgo the 60-day delayed effective date under 5 U.S.C. 801 and make this rule effective immediately and prior to end of the full Congressional review period. If this rule is not made effective prior to October 1, 2025, members of the legacy cohort

and other stakeholders would be subject to uncertainty and confusion about their continued PCAFC eligibility and assistance upon the expiration of the current transition period for the legacy cohort on September 30, 2025. Because of these burdens, further notice and public procedure would be impracticable and contrary to the public interest. 5 U.S.C. 808(2). Accordingly, the Secretary finds that there is good cause to publish this final rule with an operative and effective date of September 30, 2025. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulation and VA's regulatory impact analysis for the regulation.

Administrative Procedure Act

The Secretary finds that notice and comment procedures are not required for this final rule because it simply concludes the regulatory action from the First and Second PCAFC Extension for Legacy Cohort interim final rules. Notice and comment did in fact occur on the First and Second PCAFC Extension for Legacy Cohort interim final rules, and this final rule responds to significant and relevant comments received thereon. Additionally, as noted above, the changes from the Second PCAFC Extension for Legacy Cohort are a logical outgrowth from the First and Second PCAFC Extension for Legacy Cohort, such that further notice and comment is not required. Alternatively, were notice and comment otherwise required for this action, for the reasons discussed above and in those interim final rules, the Secretary finds that there is good cause under 5 U.S.C. 553(b)(B) that notice and comment procedures are impracticable and contrary to the public interest. Finally, for the reasons set forth in the preceding section, the Secretary finds that there is also good cause to forego the 30-day delayed effective date required under 5 U.S.C. 553(d)(3) and publish this final rule with an immediate effective date.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. OIRA has determined that this rulemaking is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, as supplemented by Executive Order 13563. This final rule is not a regulatory action under Executive Order 14192 because it does not impose any more than de minimis regulatory costs. The regulatory impact analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

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 extends the time for VA to conduct reassessments of legacy applicants, legacy participants, and their Family Caregivers and the transition period for such individuals. This rule will have no impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Mental health programs, Public assistance programs, Travel and transportation expenses, Veterans.

SIGNING AUTHORITY

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on September 12, 2025, 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.

Taylor N. Mattson,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 71 as follows:

**PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS
OFFERED TO FAMILY MEMBERS OF VETERANS**

1. The authority citation for part 71 continues to read in part as follows:

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

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§ 71.20 [Amended]

2. Amend § 71.20(b) and (c) by removing “five” and adding in its place “eight”.

§ 71.30 [Amended]

3. Amend § 71.30(e)(1) and (2) by removing “five-year” and adding in its place “eight-year”.

§ 71.40 [Amended]

4. Amend § 71.40 by:

a. In paragraphs (c)(4)(i)(B) introductory text and (c)(4)(i)(C) and (D), removing “five” and adding in its place “eight”.

b. In paragraph (c)(4)(ii)(C)(2)(i), removing “five-year” each time it appears and adding in its place “eight-year”.

c. In paragraph (c)(4)(ii)(C)(2)(ii), removing “2025” each time it appears and adding in its place “2028”.

d. In note 1 to paragraph (c)(4)(ii)(C)(2), removing “2025” each time it appears and adding in its place “2028”.

[FR Doc. 2025-18827 Filed: 9/26/2025 8:45 am; Publication Date: 9/29/2025]