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38 CFR Ch. I (7–1–07 Edition)

Pub. L. 95–588 and awards pursuant to paragraphs 29 and 30 of the Schedule for Rating Disabilities except as provided in paragraph (c) of this section.

(b) *General rule of applicability.* The provisions of this section apply to all original, reopened, or increased awards unless such awards provide only for continuity of entitlement with no increase in rate of payment.

(c) *Specific exclusions.* The provisions of this section do not apply to the following types of awards.

(1) Surviving spouse's rate for the month of a veteran's death (for exception see § 3.20(b))

(2) In cases where military retired or retirement pay is greater than the amount of compensation payable, compensation will be paid as of the effective date of waiver of such pay. However, in cases where the amount of compensation payable is greater than military retired or retirement pay, payment of the available difference for any period prior to the effective date of total waiver of such pay is subject to the general provisions of this section.

(3) Adjustments of awards—such as in the case of original or increased apportionments or the termination of any withholding, reduction, or suspension by reason of:

- (i) Recoupment,
- (ii) An offset to collect indebtedness,
- (iii) Institutionalization (hospitalization),
- (iv) Incompetency,
- (v) Incarceration,
- (vi) An estate that exceeds the limitation for certain hospitalized incompetent veterans, or
- (vii) Discontinuance of apportionments.

(4) Increases resulting solely from the enactment of legislation—such as

- (i) Cost-of-living increases in compensation or dependency and indemnity compensation,
- (ii) Increases in Improved Pension, parents' dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 pursuant to § 3.27, or
- (iii) Changes in the criteria for statutory award designations.

(5) Temporary total ratings pursuant to paragraph 29 of the Schedule for Rating Disabilities when the entire pe-

riod of hospitalization or treatment, including any period of post-hospitalization convalescence, commences and terminates within the same calendar month. In such cases the period of payment shall commence on the first day of the month in which the hospitalization or treatment began.

(Authority: 38 U.S.C. 1822, 5111)

[48 FR 34472, July 29, 1983; 48 FR 37031, Aug. 16, 1983, as amended at 49 FR 47003, Nov. 30, 1984; 65 FR 35282, June 2, 2000; 67 FR 49586, July 31, 2002]

§ 3.32 Exchange rates for foreign currencies.

When determining the rates of pension or parents' DIC or the amounts of burial, plot or headstone allowances or accrued benefits to which a claimant or beneficiary may be entitled, income received or expenses paid in a foreign currency shall be converted into U.S. dollar equivalents employing quarterly exchange rates established by the Department of the Treasury.

(a) *Pension and parents' DIC.* (1) Because exchange rates for foreign currencies cannot be determined in advance, rates of pension and parents' DIC shall be projected using the most recent quarterly exchange rate and shall be adjusted retroactively based upon actual exchange rates when an annual eligibility verification report is filed.

(2) Retroactive adjustments due to fluctuations in exchange rates shall be calculated using the average of the four most recent quarterly exchange rates. If the claimant reports income and expenses for a prior reporting period, the retroactive adjustment shall be calculated using the average of the four quarterly rates which were the most recent available on the closing date of the twelve-month period for which income and expenses are reported.

(b) *Burial, plot or headstone allowances and accrued benefits.* Payment amounts for burial, plot or headstone allowances and claims for accrued benefits as reimbursement from the person who bore the expenses of a deceased beneficiary's last illness or burial shall be determined using the quarterly exchange rate for the quarter in which the expenses forming the basis of the claim

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were paid. If the claim is filed by an unpaid creditor, however, the quarterly rate for the quarter in which the veteran died shall apply. When entitlement originates during a quarter for which the Department of the Treasury has not yet published a quarterly rate, amounts due shall be calculated using the most recent quarterly exchange rate.

CROSS-REFERENCES: Accrued benefits. See § 3.1000. Accrued benefits payable to foreign beneficiaries. See § 3.1008.

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

[55 FR 8140, Mar. 7, 1990; 55 FR 10867, Mar. 23, 1990]

GENERAL

§ 3.40 Philippine and Insular Forces.

(a) *Regular Philippine Scouts.* Service in the Philippine Scouts (except that described in paragraph (b) of this section), the Insular Force of the Navy, Samoan Native Guard, and Samoan Native Band of the Navy is included for pension, compensation, dependency and indemnity compensation, and burial allowance. Benefits are payable in dollars at the full-dollar rate.

(b) *Other Philippine Scouts.* Service of persons enlisted under section 14, Pub. L. 190, 79th Congress (Act of October 6, 1945), is included for compensation and dependency and indemnity compensation. Except as provided in §§ 3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of \$0.50 for each dollar authorized under the law. All enlistments and reenlistments of Philippine Scouts in the Regular Army between October 6, 1945, and June 30, 1947, inclusive, were made under the provisions of Pub. L. 190 as it constituted the sole authority for such enlistments during that period. This paragraph does not apply to officers who were commissioned in connection with the administration of Pub. L. 190.

(Authority: 38 U.S.C. 107)

(c) *Commonwealth Army of the Philippines.* (1) Service is included, for compensation, dependency and indemnity compensation, and burial allowance, from and after the dates and hours, respectively, when they were called into service of the Armed Forces of the

United States by orders issued from time to time by the General Officer, U.S. Army, pursuant to the Military Order of the President of the United States dated July 26, 1941. Service as a guerrilla under the circumstances outlined in paragraph (d) of this section is also included. Except as provided in §§ 3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of \$0.50 for each dollar authorized under the law.

(Authority: 38 U.S.C. 107)

(2) Unless the record shows examination at time of entrance into the Armed Forces of the United States, such persons are not entitled to the presumption of soundness. This also applies upon reentering the Armed Forces after a period of inactive service.

(d) *Guerrilla service.* (1) Persons who served as guerrillas under a commissioned officer of the United States Army, Navy or Marine Corps, or under a commissioned officer of the Commonwealth Army recognized by and cooperating with the United States Forces are included. (See paragraph (c) of this section.) Service as a guerrilla by a member of the Philippine Scouts or the Armed Forces of the United States is considered as service in his or her regular status. (See paragraph (a) of this section.)

(2) The following certifications by the service departments will be accepted as establishing guerrilla service:

(i) Recognized guerrilla service;

(ii) Unrecognized guerrilla service under a recognized commissioned officer only if the person was a former member of the United States Armed Forces (including the Philippine Scouts), or the Commonwealth Army. This excludes civilians.

A certification of *Anti-Japanese Activity* will not be accepted as establishing guerrilla service.

(e) *Combined service.* Where a veteran who had Commonwealth Army or guerrilla service and also had other service, wartime or peacetime, in the Armed Forces of the United States, has disabilities which are compensable separately on a dollar and a \$0.50 for each