

§ 3.261

38 CFR Ch. I (7-1-08 Edition)

when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) *Fractions of dollars.* In computing a claimant's annual income a fraction

of a dollar will be disregarded for the purpose of determining entitlement to monthly payments of pension and dependency and indemnity compensation.

(Authority: 38 U.S.C. 1315(g)(2); 1503(b))

[28 FR 30, Jan. 1, 1963, as amended at 29 FR 2944, Mar. 4, 1964; 37 FR 6677, Apr. 1, 1972; 40 FR 16066, Apr. 9, 1975]

§ 3.261 Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§ 3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

(a) *Income.*

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
(1) Total income from employment, business, investments, or rents.	Included	Included	Included	Included	§ 3.262(a).
(2) Income of spouse .....	.....do .....	.....do	Excluded .....	.....do	§ 3.262(b).
(3) Earnings of members of family under legal age.	.....do	Excluded .....	.....do	Excluded	§ 3.250(b)(2). § 3.252(e)(3).
(4) Earned income of child-claimant .....	.....do .....	.....do	Included .....	.....do	
(5) Gifts, including contributions from adult members of family:					
Property .....	.....do	Included .....	.....do .....	.....do	§ 3.262(k).
Money .....	.....do .....	.....do .....	.....do	Included.	
(6) Value of maintenance by relative, friend, or organization.	Excluded	Excluded	Excluded	Excluded	§ 3.262(c).
(7) Rental value of property owned by and resided in by claimant.	.....do .....	.....do .....	.....do .....	.....do	
(8) Charitable donations .....	.....do .....	.....do	Included .....	.....do	§ 3.262(d).
(9) Family allowance authorized by service personnel.	Included	Included .....	.....do	Included.	
(10) Reasonable value of allowances to person in service in addition to base pay.	.....do .....	.....do .....	.....do	Included except as earned income of child-claimant.	
(11) Mustering-out pay	Excluded .....	.....do	Excluded .....	.....do	
(12) Six-months' death gratuity .....	.....do	Excluded .....	.....do	Excluded.	
(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.	Excluded	Excluded	Excluded	Excluded.	
(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):					
Retired Serviceman's Family Protection Plan (Subch. I):					
Annuities .....	.....do .....	.....do .....	.....do .....	.....do	
Refund (10 U.S.C. 1446)	Included	Included	Included	Included.	
Survivor Benefit Plan (Subch. II) (Pub. L. 92-425; 86 Stat. 706).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(e).
Annuity under § 653, Pub. L. 100-456	Included	Included	Excluded	Excluded	§ 3.262(r).
(15) Retirement pay received direct from service department.	Included	Included	Included	Included	§ 3.262(e).
.....do .....	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(h).
(16) Retirement benefits; general .....	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(e).
(17) Social security benefits:					
Old age and survivors', and disability insurance.	Included	Included	Included	Included	§ 3.262(f).
Charitable programs	Excluded	Excluded .....	.....do	Excluded.	

Department of Veterans Affairs

§ 3.261

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
Lump-sum death payments	Included .....	.....do .....	.....do .....	.....do.	§ 3.262(g).
Supplemental security income	Excluded	Excluded .....	.....do .....	.....do.	
(18) Railroad Retirement benefits .....	.....do	Included	Disability pension—Excluded Death pension—Included.	Included	
(19) Retirement pay waived under Federal statute.	Excluded	Excluded	Excluded .....	.....do	§ 3.262(h).
(20) Department of Veterans Affairs payments:					
Pension	Excluded	Excluded	Excluded	Excluded.	
Compensation and dependency and indemnity compensation.	.....do .....	.....do .....	.....do .....	.....do.	
World War I adjusted compensation .....	.....do	Included .....	.....do	Included.	
U.S. Government life insurance or national service life insurance for disability or death, maturity of endowment policies, and dividends, including special and termination dividends.	Excluded	Excluded	Excluded	Excluded.	
Servicemembers' group life insurance .....	.....do .....	.....do .....	.....do .....	.....do.	
Veterans' group life insurance .....	.....do .....	.....do .....	.....do .....	.....do.	
Servicemembers' indemnity .....	.....do .....	.....do .....	.....do .....	.....do.	
Subsistence allowance (38 U.S.C. ch. 31)	Included	Included	Included	Included.	
Veterans educational assistance in excess of amounts expended for training (38 U.S.C. ch. 34).	.....do .....	.....do .....	.....do .....	.....do.	
Educational assistance (38 U.S.C. ch. 35)	.....do .....	.....do .....	.....do .....	.....do.	
Special allowance under 38 U.S.C. 1312(a).	Excluded	Included .....	.....do	Excluded. Included.	
Statutory burial allowance .....	.....do	Excluded .....	.....do	Excluded.	
Accrued .....	.....do	Included, except accrued as reimbursement.	.....do	Included, except accrued as reimbursement.	
(21) Compensation (civilian) for injury or death.	Included	Included	Included	Included	§ 3.262(i).
(22) Contributions by a public or private employer to a:					
Public or private health or hospitalization plan for an active or retired employee.	Excluded	Excluded	Excluded	Excluded.	
Retired employee as reimbursement for premiums for supplementary medical insurance benefits under the Social Security Program (Pub. L. 91-588; 84 Stat. 1580).	Included	Included	Excluded	Excluded.	
(23) Overtime pay; Government employees ...	Included	Included	Disability pension—Excluded. Death pension—Included.	Included.	
(24) Commercial life insurance; disability, accident, or health insurance, less payments of medical or hospital expenses resulting from the accident or disease for which payments are made.	Included (as received).	Included (as received).	Included (special provision).	Included (as received).	§ 3.262(j).
(25) Commercial annuities or endowments .....	.....do	Included (special provision).	.....do	Included (special provision).	§ 3.262(j).
(26) Dividends from commercial insurance	Excluded	Excluded	Excluded	Excluded.	
(27) Insurance under Merchant Marine Act of 1936, as amended.	Included	Included	Included	Included.	
(28) Reimbursement for casualty loss (Pub. L. 100-687).	Included	Excluded	Included	Included	§ 3.262(t)
Other fire Insurance	Excluded	Excluded	Excluded	Excluded	§ 3.262(t)
(29) Bequests, devises and inheritances:					
Property	Included	Excluded	Included .....	.....do	§ 3.262(k).

§ 3.261

38 CFR Ch. I (7-1-08 Edition)

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
Money .....	.....do	Included .....	.....do	Included.	
Joint bank accounts .....	.....do .....	.....do .....	.....do	Excluded	§ 3.262(k)(1).
(30) Profit from sale of property	Excluded	Excluded	Excluded	Excluded	§ 3.262(k).
(31) Jury duty or obligatory civic duties .....	.....do .....	.....do .....	.....do .....	.....do.	
(32) Relocation payments (Pub. L. 90-448; Pub. L. 90-495).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(c).
(33) The following programs administered by the ACTION Agency:					
Foster Grandparent Program and Older Americans Community Service Programs payments (Pub. L. 93-29; 87 Stat. 55).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(q)(1).
Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP), and Older American Community Service Programs, Retired Senior Volunteer Program (RSVP), Senior Companion Program (Pub. L. 93-113; 87 Stat. 394).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(q)(2).
(34) The Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) administered by the Small Business Administration. (Pub. L. 93-113; 87 Stat. 394).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(q)(2).
(35) Agent Orange settlement payments (Pub. L. 101-201).	Excluded	Excluded	Excluded	Excluded	§ 3.262(s)
(36) Restitution to individuals of Japanese ancestry (Pub. L. 100-383).	Excluded	Excluded	Excluded	Excluded	§ 3.262(u)
(37) Income received by American Indian beneficiaries from Trust or Restricted lands (Pub. L. 103-66).	Excluded	Excluded	Excluded	Excluded	3.262(v)
(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426).	Excluded	Excluded	Included	Included	3.262(w)
(39) Cash, stock, land or other interests received from a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 <i>et seq.</i>).	Excluded	Excluded	Excluded	Excluded	§ 3.262(x)
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)
(41) Income received under the Victims of Crime Act of 1984 (42 U.S.C. 10601-10605)..	Excluded ¹	Excluded ¹	Excluded ¹	Excluded ¹	§ 3.262(z)
(42) Income received under the Medicare prescription drug discount card and transitional assistance program (42 U.S.C. 1395w-141(g)(6)).	Excluded	Excluded	Excluded	Excluded	§ 3.262 (aa)

¹ The compensation received through a crime victim compensation program will be excluded from income computations unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(b) Deduction of amounts paid by claimant.

Deduction	Dependency (parents)	Dependency and indemnity compensation	Pension; old-law (veterans, surviving spouses, and children)	Pension; section 306 (veterans, surviving spouses, and children)	See
(1) Unusual medical expenses	Not authorized	Authorized	Not authorized	Authorized	§§ 3.262(b)(1) and (1).
(2) Veteran: just debts, expenses of last illness and burial.	Not authorized	Authorized, except debts.	Not authorized	Authorized	§§ 3.262(m) and (o).

Deduction	Dependency (parents)	Dependency and indemnity compensation	Pension; old-law (veterans, surviving spouses, and children)	Pension; section 306 (veterans, surviving spouses, and children)	See
(3) Veteran's spouse or child: expenses of last illness and burial.	Not authorized	Not authorized	Not authorized	Authorized	§ 3.262(n).
(4) Parent's spouse; just debts; expenses of last illness and burial.	Not authorized	Authorized .....	.....	.....	§ 3.262(o).
(5) Prepayment on real property mortgages after death of spouse (Pub. L. 91-588).	Not authorized	Not authorized	Not authorized	Authorized	§§ 3.262(k)(6).

(c) *Corpus of estate.*

	Dependency (parents)	Dependency and indemnity compensation	Pension; old-law (veterans, widows, and children)	Pension; section 306 (veterans, surviving spouses, and children)	See
	Considered conditionally	Not considered.	Not considered.	Considered ...	§ 3.263.

[28 FR 31, Jan. 1, 1963, as amended at 29 FR 15205, Nov. 11, 1964; 31 FR 15632, Dec. 13, 1966; 33 FR 15286, Oct. 15, 1968; 36 FR 8446, May 6, 1971; 37 FR 6677, Apr. 1, 1972; 37 FR 7092, Apr. 8, 1972; 37 FR 21436, Oct. 11, 1972; 38 FR 872, Jan. 5, 1973; 38 FR 26804, Sept. 26, 1973; 38 FR 28826, Oct. 17, 1973; 40 FR 13305, Mar. 26, 1975; 40 FR 57459, Dec. 10, 1975; 41 FR 17386, Apr. 26, 1976; 42 FR 43834, Aug. 31, 1977; 57 FR 59298, Dec. 15, 1992; 58 FR 12174, Mar. 3, 1993; 58 FR 31909, June 7, 1993; 58 FR 33766, June 21, 1993; 59 FR 37696, July 25, 1994; 60 FR 2522, Jan. 10, 1995; 60 FR 18355, Apr. 11, 1995; 62 FR 51278, Sept. 30, 1997; 67 FR 49586, July 31, 2002; 68 FR 60852, Oct. 24, 2003; 70 FR 15591, Mar. 28, 2005]

§ 3.262 Evaluation of income.

(a) *Total income.* All income from sources such as wages, salaries, earnings, bonuses from employers, income from a business or profession or from investments or rents as well as the fair value of personal services, goods or room and board received in lieu thereof will be included.

(1) Salary is not determined by "takehome" pay, but includes deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws.

(2) The gross income from a business or profession may be reduced by the necessary operating expenses, such as cost of goods sold, or expenditures for rent, taxes, and upkeep. Depreciation

is not a deductible expense. The cost of repairs or replacement may be deducted. The value of an increase in stock inventory of a business is not considered income.

(3) A loss sustained in operating a business, profession, or farm or from investments may not be deducted from income derived from any other source.

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant.

(1) *Parents.* Where the mother and father, or remarried parent and spouse are living together, the total combined income will be considered in determining dependency, or in determining the rate of dependency and indemnity compensation payable to the parent. This rule is equally applicable where both parents have remarried and each is living with his or her spouse. If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, income of the spouse will be excluded.

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will