

## Department of Veterans Affairs

## § 3.500

U.S.C. 1532, 1534, or 1536 apportionment will be based on the facts in the individual case in accordance with § 3.451.

(b) *Section 306 and old-law death pension.* Appointment of benefits provided under these pension programs will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451.

(Authority: 38 U.S.C. 5307)

(c) *Improved death pension.* Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451.

(Authority: 38 U.S.C. 5307)

[41 FR 21324, May 25, 1976, as amended at 43 FR 14018, Apr. 4, 1978; 44 FR 45940, Aug. 6, 1979; 61 FR 20727, May 8, 1996]

### § 3.461 Dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) *Rates payable.* (1) The share for each of the children under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share

and not otherwise included in the computation.

(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.

[43 FR 14018, Apr. 4, 1978, as amended at 61 FR 20727, May 8, 1996]

## REDUCTIONS AND DISCONTINUANCES

### § 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 5112(b))

(a) *Except as otherwise provided (38 U.S.C. 5112(a)).* In accordance with the facts found.

(b) *Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)).* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.

(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) *Annual income.* See § 3.660.

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(d) *Apportionment* (§§ 3.450 series; § 3.556). (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under § 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) *Federal employees' compensation* (§ 3.708). The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective. If children on rolls and surviving spouse has primary title, award to children discontinued same date as surviving spouse's award.

(Authority: 5 U.S.C. 8116)

(f) *Contested claims* § 3.402(b) and § subpart F of part 20 of this chapter). Date of last payment.

(g) *Death* (38 U.S.C. 5112 (a), (b))—(1) *Payee* (includes *apportioneer*). Last day of month before death.

(2) *Dependent of payee* (includes *apportioneer*):

(i) Death prior to October 1, 1982: last day of the calendar year in which death occurred.

(ii) Death on or after October 1, 1982: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

(3) *Veteran receiving retirement pay*. Date of death.

(h) *Dependency of parent* (38 U.S.C. 5112; Pub. L. 90-275; §§ 3.4(a), (b)(2), 3.250, 3.551(b) and 3.660). See § 3.660.

(i) *Election of Department of Veterans Affairs benefits* (§ 3.700 series). Day preceding beginning date of award under other law.

(j) *Foreign residence* (38 U.S.C. 5308(a)). See § 3.653.

(k) *Fraud* (38 U.S.C. 6103(a), (d); §§ 3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) *Guardian, marriage or divorce of* (§ 3.856). Date of last payment (pending receipt of information as to change of name).

(m) *Incompetency* (§ 3.855). Date of last payment.

(n) *Marriage (or remarriage)* (38 U.S.C. 101(3), 5112 (b))—(1) *Payee* (includes *apportioneer*). Last day of month before marriage.

(2) *Dependent of payee* (includes *apportioneer*):

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

(3) *Conduct of surviving spouse*. Last day of month before inception of relationship.

(Authority: 38 U.S.C. 101(4), 501)

(o) *Penal institutions*. See § 3.666.

(p) *Philippines* (38 U.S.C. 107(a)(3); § 3.40). Date of last payment when recognition of service withdrawn.

(q) *Renouncement* (§ 3.106). Last day of the month in which the renouncement is received.

(r) *Service connection* (38 U.S.C. 5112(b)(6); § 3.105). Last day of month following 60 days after notice to payee. Applies to reduced evaluation, and severance of service connection.

(s) *Treasonable acts or subversive activities* (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) *Treasonable acts*. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) *Subversive activities*. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) *Whereabouts unknown* (§§ 3.158, 3.656). Date of last payment.

(u) *Change in law or Department of Veterans Affairs issue, or interpretation*. See § 3.114.

(v) *Failure to furnish evidence of continued eligibility*. See § 3.652 (a) and (b).

(w) *Failure to furnish Social Security number*. Last day of the month during which the 60 day period following the date of VA request expires.

(x) *Radiation Exposure Compensation Act of 1990* (§ 3.715). (Compensation or dependency and indemnity compensation only.) Last day of the month preceding the month in which payment

under the Radiation Exposure Compensation Act of 1990 is issued.

(y) *Compensation for certain disabilities due to undiagnosed illnesses (§§ 3.105; 3.317)*. Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103-446; 38 U.S.C. 501(a))

(Authority: 38 U.S.C. 8301)

CROSS REFERENCE: Failure to return questionnaire. See § 3.661(b).

[26 FR 1596, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.500, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 3.501 Veterans.

The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Active service pay (38 U.S.C. 5112(b)(3); Pub. L. 87-825; § 3.700(a))*. Day preceding entrance on active duty. See § 3.654.

(b) *Aid and attendance—(1) Section 3.552(b)(1)*. Last day of calendar month following month in which veteran is hospitalized at Department of Veterans Affairs expense.

(2) *Section 3.552(b)(2)*. Last day of calendar month following month in which veteran hospitalized at United States Government expense.

(3) *Aid and attendance for spouse*. End of month in which award action is taken if need for aid and attendance has ceased.

(c) *Disappearance of veteran*. See § 3.656.

(d) *Divorce or annulment (38 U.S.C. 5112(b)(2))*:

(1) Divorce or annulment prior to October 1, 1982: last day of the calendar year in which divorce or annulment occurred.

(2) Divorce or annulment on or after October 1, 1982: last day of the month in which divorce or annulment occurred, except that section 306 and old-

law pension reductions or terminations will continue to be effective the last day of the calendar year in which divorce or annulment occurred.

(e) *Employability regained (38 U.S.C. 5112(b)(5), (6); Pub. L. 87-825; § 3.105)—(1) Pension*. Last day of month in which discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

(f) *Employment questionnaire, failure to return*. Reduce award to the amount payable for the schedular evaluation shown in the current rating as of the day following the date of last payment.

(g) *Evaluation reduced (38 U.S.C. 5112(b)(5), (6); Pub. L. 87-825; § 3.105)—(1) Pension*. Last day of month in which reduction or discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

(h) *Examination; failure to report*. See § 3.655.

(i) *Hospitalization—(1) Section 3.551(b)*. Last day of the sixth calendar month following admission if veteran without dependents.

(2) *Section 3.551(c)*. (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) *Section 3.552(b)* Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) *Section 3.551(d)* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though