

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AH12

Exclusions from Income (RECA Payments)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning income and net worth exclusions. The purpose of the rule is to implement legislation excluding from consideration as countable income and net worth amounts paid to claimants under the Radiation Exposure Compensation Act (RECA). The intended effect of this amendment is to have VA regulations conform to the requirements of that statute.

EFFECTIVE DATE: This amendment is effective October 15, 1990, the date specified in Pub. L. 101-426.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Public Law 101-426, the Radiation Exposure Compensation Act (RECA), was enacted by Congress to compensate individuals who may have suffered adverse health effects from working in uranium mines or living downwind of above-ground nuclear tests. Section 6(h) of that law provides that RECA payments shall not be included as income or resources for

purposes of determining eligibility for benefits described in section 3803(c)(2)(C) of Title 31, United States Code. Title 31 U.S.C. 3803(c)(2)(C)(viii) lists benefits under chapters 11, 13 and 15 of Title 38, United States Code, which governs payment of VA benefits.

VA administers several income-based benefit programs under which a claimant's countable income determines the rate of VA benefits payable. Net worth may also affect eligibility. Those affected by RECA are death compensation (38 U.S.C. chapter 11), Parents' Dependency and Indemnity Compensation (38 U.S.C. chapter 13) and the Improved Pension program (38 U.S.C. chapter 15). Other VA benefits which are income-based, notably the prior pension programs known as the Section 306 and Old Law pension programs, are no longer authorized under those chapters of 38 U.S.C. listed in Public Law 101-426.

VA regulations at 38 CFR 3.271 state that payments of any kind from any source shall be counted as income for purposes of the Improved Pension program unless specifically excluded under 38 CFR 3.272. 38 CFR 3.261(a) indicates whether various categories of income are included or excluded when determining eligibility for Parents Dependency and Indemnity Compensation or pension programs which were in effect prior to January 1, 1979. It also indicates whether various categories of income are included or excluded when determining whether a parent qualifies as a dependent parent for purposes of 38 U.S.C. chapter 11. 38 CFR 3.274 states that Improved Pension shall be denied or discontinued when the corpus of a claimant's estate is such that it is reasonable that some of the estate be used for the claimant's maintenance.

We are amending 38 CFR 3.261, 3.262, and 3.272 to show that RECA payments are excludable from countable income for Parents' Dependency and Indemnity Compensation, the Improved Pension program, and in determining whether a parent is dependent for purposes of 38 U.S.C. chapter 11. We are amending 38 CFR 3.275 to show that

RECA payments are not to be included in computing an Improved Pension claimant's net worth. Net worth is not a factor for Parents' Dependency and Indemnity Compensation. The purpose of this rule is to amend the regulations to be consistent with the provisions of section 6 of Public Law 101-426.

This final rule is made effective without notice and comment since it makes changes merely to reflect statutory requirements.

The Secretary 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 (RFA), 5 U.S.C. 601-612. This rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: December 22, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended 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. In § 3.261, a new paragraph (a)(38) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

(a) *Income*

*	*	*	*	*	*	*	*
(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426)	Excluded	Excluded	Included	Included	3.262(w)		
*	*	*	*	*	*	*	*

3. In § 3.262, paragraph (w) and its authority citation are added to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(w) *Radiation Exposure Compensation Act.* For the purposes of parents' dependency and indemnity

compensation, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990. (Authority: 42 U.S.C. 2210 note)