

exceptions to the lending limits for 1–4 family residential real estate loans and loans to small businesses. The exceptions benefit national banks, purchasers of real estate, and small businesses. This information collection requires national banks that want to take advantage of the exceptions to apply to OCC and receive approval before using the exceptions. The OCC needs the information to evaluate whether a bank is eligible to use the exceptions and to insure that the bank's safety and soundness will not be jeopardized.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,820.

Estimated Number of Responses: 1,820.

Estimated Annual Burden: 47,320 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 1, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

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DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of

legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefits claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT:

Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW, (026H), Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(8) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the internet at <http://www1.va.gov/OGC/>.

VAOPGCPREC 10–2004

Questions Presented

A. In general, what impact does a veteran's return to active duty have on a pending claim for benefits? What is the status of the veteran's claim? What actions should or may the Department of Veterans Affairs (VA) take?

B. When a veteran's claim has been remanded to a regional office for an examination and the veteran is not available for the examination because of the veteran's return to active duty, what is the status of the veteran's claim? What actions should or may VA take?

C. When a veteran with a pending claim returns to active duty and is able to attend a scheduled examination while on active duty, what is the status

of the veteran's claim? What actions should or may VA take?

D. If a veteran with a pending claim returns to active duty and dies while on active duty, what is the effect of the pending claim on a subsequent claim for accrued benefits?

Held

A. A veteran's return to active duty while his or her claim for benefits from the Department of Veterans Affairs (VA) is pending does not alter the rights and duties of the claimant and VA under any statute or regulation with respect to the development and adjudication of the claim or the status of the claim within the meaning of any statute or regulation. VA should process the claims of such veterans in the same fashion as it would had the veterans not returned to active duty. If a veteran's return to active duty temporarily prevents VA from providing a necessary medical examination or taking other action necessary to a proper decision on the claim, VA may suspend or defer action on the claim until the necessary actions can be accomplished. VA may not deny a claim solely because the veteran has returned to active duty or solely because the veteran is temporarily unavailable for a necessary examination due to his or her return to active duty.

B. When a veteran's claim has been remanded to a regional office for an examination and the veteran is not available for the examination because of the veteran's return to active duty, VA may defer action on the claim until the required examination can be conducted. VA may not deny the claim solely because the veteran is temporarily unavailable for examination due to his or her return to active duty. The veteran's return to active duty does not alter the status of the veteran's claim within the meaning of any statute or regulation.

C. When a veteran has a pending claim and returns to active duty, but is able to attend a VA examination while on active duty, VA should process the claim in the same manner as it would if the veteran had not returned to active duty. The veteran's return to active duty does not alter the status of the veteran's claim within the meaning of any statute or regulation.

D. If a veteran with a pending claim returns to active duty and dies on active duty before the claim is decided, the pending claim may provide the basis for an award of accrued benefits to a survivor under 38 U.S.C. 5121(a). Accrued benefits consist only of amounts "due and unpaid" to the deceased beneficiary. Because 38 U.S.C. 5304(c) prohibits VA from paying

compensation or pension to a veteran for any period in which the veteran received active service pay, accrued benefits under 38 U.S.C. 5121(a) may not include compensation and pension amounts for any period for which the veteran received active service pay.

Effective Date: September 21, 2004.

VAOPGCPREC 1-2005

Question Presented

Does the Veterans Claims Assistance Act of 2000 (VCAA) apply to claims by states regarding the construction, recognition, and payment of per diem to State homes?

Held

The provisions of the VCAA requiring VA to provide notice of any information or any medical or lay evidence necessary to substantiate the claim, and the duty to assist a claimant in obtaining evidence necessary to substantiate a claim, are not applicable to a claim by a state regarding State home construction, recognition, and payment of per diem.

Effective Date: February 9, 2005.

VAOPGCPREC 2-2005

Question Presented

Does the tax exemption provided to beneficiaries of the Department of Veterans Affairs' (VA) Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs under 38 U.S.C. 1970(g) apply to the Federal tax on generation-skipping transfers (GST) imposed by chapter 13 of title 26, United States Code?

Held

Under 38 U.S.C. 1970(g), Servicemembers' Group Life Insurance and Veterans Group Life Insurance proceeds that are to be paid directly to a beneficiary who is more than one generation below the insured are exempt from the Federal tax on generation-skipping transfers imposed by chapter 13 of title 26, United States Code.

Effective Date: February 9, 2005.

VAOPGCPREC 3-2005

Question Presented

When does the sixty-first day of incarceration occur pursuant to 38 U.S.C. 5313(a) and 1505(a) when a veteran is given credit for time served prior to conviction or prior to sentencing for a felony, or, for purposes of section 1505(a), a misdemeanor?

Held

The provisions of 38 U.S.C. 5313(a) and 1505(a) do not apply until all of the following requirements of the statutes have been satisfied: (1) Incarceration (imprisonment); (2) in a Federal, State, or local penal institution; (3) in excess of sixty days; and (4) for (as a result of) conviction of a felony (or a misdemeanor under section 1505(a)). For purposes of these statutes, when a veteran is incarcerated for conviction for a felony, or, for purposes of section 1505(a), a misdemeanor, the sixty-first day of incarceration cannot occur until sixty-one days after guilt is pronounced by a judge or jury and the veteran is incarcerated in a penal institution because of the determination of guilt, notwithstanding that the veteran may be given credit for time served prior to those events. However, once a veteran is imprisoned or incarcerated in a penal institution because of pronouncement of guilt for a felony (or misdemeanor in the case of section 1505(a)), the period of incarceration for purposes of 38 U.S.C. 5313(a) and 1505(a) would include the period of incarceration between the date of conviction and the date of sentencing, *i.e.*, reduction of benefits could occur as of the sixty-first day after conviction.

Effective Date: February 23, 2005.

VAOPGCPREC 4-2005

Question Presented

Whether a request for equitable relief may be considered "an administrative remedy" as that terminology is used in section 113(b) of Public Law 106-419?

Held

A request for equitable relief, although an administrative remedy in the broad sense, does not constitute "an administrative remedy" as that terminology is used within the context of Public Law 106-419, § 113(b).

Effective Date: April 21, 2005.

VAOPGCPREC 5-2005

Question Presented

May the Department of Veterans Affairs award a total disability rating based on "temporary" individual unemployability under 38 CFR 4.16(b)?

Held

Section 4.16 of title 38, Code of Federal Regulations, authorizes the Department of Veterans Affairs to assign a total rating based on individual unemployability (TDIU rating) based upon a veteran's temporary (*i.e.*, non-permanent) inability to follow a substantially gainful occupation. However, not every period of inability to work will establish an inability to

follow a substantially gainful occupation warranting a TDIU rating, because it may be possible to secure and retain employment and to earn significant income despite occasional periods of incapacity. VA must make determinations regarding ability or inability to follow a substantially gainful occupation on a case-by-case basis, taking into account such factors as the frequency and duration of periods of incapacity or time lost from work due to disability, the veteran's employment history and current employment status, and the veteran's annual income from employment, if any.

Effective Date: November 25, 2005.

VAOPGCPREC 1-2006

Question Presented

You requested our opinion regarding the proper delimiting date under 38 U.S.C. 3031 for a veteran who qualifies for education benefits under the Montgomery GI Bill (MGIB) by serving at least three years on active duty followed by at least four years in the Selected Reserve.

Held

In a case where a veteran meets the eligibility requirements for Chapter 30 MGIB education benefits under both 38 U.S.C. 3011 and 3012, the veteran has the right to claim entitlement under whichever of such sections is most advantageous to the veteran. This includes choosing to become entitled under section 3012 when that affords a later delimiting date for using those benefits pursuant to 38 U.S.C. 3031(a)(1).

Effective Date: May 21, 2006.

VAOPGCPREC 2-2006

Question Presented

Is 38 U.S.C. 6107 applicable where a fiduciary misused benefits of a Department of Veterans Affairs (VA) beneficiary before enactment of that statute if VA makes a finding of misuse after that date?

Held

Where VA makes a determination after December 10, 2004, that a fiduciary misused a beneficiary's VA benefits, 38 U.S.C. 6107 is applicable according to its terms, regardless of whether the misuse occurred before or after that date.

Effective Date: June 30, 2006.

VAOPGCPREC 3-2006

Question Presented

Does former 38 CFR 4.71a, Diagnostic Code (DC) 5285 (2003), authorize a single 10-percent additional disability

rating based on demonstrable deformity of a vertebral body, or does DC 5285 permit multiple 10-percent additional ratings for multiple deformed vertebrae?

Held

Where residuals of vertebral fracture are rated based on limited motion or muscle spasm, former 38 CFR 4.71a, Diagnostic Code (DC) 5285 (2003), authorizes no more than a single 10-percent increase for demonstrable deformity of a vertebral body or vertebral bodies in the spinal segment (cervical, dorsal, or lumbar) that is the subject of the rating. Where spine fracture residuals cause limited motion to more than one spinal segment and DC 5285 permits separate ratings for each segment, DC 5285 authorizes a 10-percent increase to the rating assigned to each segment of the spine containing at least one demonstrably deformed vertebral body.

Effective Date: June 23, 2006.

VAOPGCPREC 4-2006

Question Presented

1. Pursuant to Public Law 109-233, may the Department of Veterans Affairs (VA) provide Specially Adapted Housing (SAH) assistance to active duty service members who are temporarily residing in a home owned by a family member?

2. Does Public Law 109-233 change the one-time usage of SAH grant benefits?

Held

1. Section 101 of Public Law 109-233 does not authorize VA to provide SAH assistance authorized under 38 U.S.C. 2102A to active duty service members who are temporarily residing in a home owned by a family member.

2. Section 101 changes the one-time usage limitation on SAH grants to allow veterans to obtain up to three grants under chapter 21, title 38, United States Code, in an aggregate amount not to exceed \$50,000 for veterans eligible under 38 U.S.C. 2101(a) and \$10,000 under 38 U.S.C. 2101(b).

Effective Date: August 3, 2006.

VAOPGCPREC 5-2006

Question Presented

Is incarceration in a correctional facility that is owned and operated by

a private corporation pursuant to a contract with a State to provide correctional facilities for the State incarceration in a "Federal, State, or local penal institution" within the meaning of 38 U.S.C. 5313?

Held:

Section 5313 of title 38, United States Code, limits the payment of compensation to any person who is incarcerated in a Federal, State, or local penal institution for a period greater than 60 days for conviction of a felony. Incarceration in a correctional facility owned and operated by a private corporation pursuant to a contract with a State department of corrections responsible within a State for the incarceration of convicted felons is incarceration in a State penal institution within the meaning of section 5313.

Effective Date: August 11, 2006.

VAOPGCPREC 6-2006

Question Presented

You asked us whether the tax exemption provided by 38 U.S.C. 1970(g) to payments due or to become due under the Department of Veterans Affairs Servicemembers' Group Life Insurance (SGLI) program also applies to payments under Traumatic SGLI (TSGLI).

Held:

The tax exemption provided by 38 U.S.C. 1970(g) to payments due or to become due under the Servicemembers' Group Life Insurance program also applies in the same manner to payments due or to become due under the traumatic injury protection provided by 38 U.S.C. 1980A.

Effective Date: November 25, 2006.

VAOPGCPREC 1-2007

Question Presented

Do the procedures required by 38 CFR 3.105(e) apply where a total disability rating based on individual unemployability is reinstated for a limited period on the grounds of clear and unmistakable error in the original termination of the rating?

Held:

Section 3.105(e) of title 38, Code of Federal Regulations, requires the Department of Veterans Affairs (VA) to follow specified procedures, including providing advance notice and an

opportunity to present evidence and be heard, when terminating a total disability rating based on individual unemployability if the termination would result in reduction of compensation payments currently being made. However, if VA retroactively reinstates such a total disability rating on the grounds of clear and unmistakable error in the original termination of the rating, section 3.105(e) does not apply to the determination of the duration of the reinstated rating because there would be no reduction in compensation payments currently being made.

Effective Date: January 17, 2007.

**Withdrawal of Previously Published Opinions of the General Counsel—
VAOPGCPREC 6-93 (In Part) &
VAOPGCPREC 12-94 (In Full)**

We are withdrawing our opinion in VAOPGCPREC 6-93 in part, and our opinion in VAOPGCPREC 12-94 in its entirety, due to a 2002 rulemaking action that amended 38 CFR 3.1000(d)(4) and a related manual provision. VAOPGCPREC 6-93 held in part that an award of accrued benefits under 38 U.S.C. 5121(a) may be based on logical inferences from information in the file at the date of the beneficiary's death. VAOPGCPREC 12-94 clarified this holding of VAOPGCPREC 6-93 by stating that where a veteran had in the past supplied evidence of unreimbursed medical expenses that could be expected to be incurred in like manner in succeeding years, such evidence could form the basis for a determination that evidence in the file at the date of the veteran's death permitted prospective estimation of medical expenses for accrued benefits purposes, regardless of whether such expenses were deducted prospectively during the veteran's lifetime.

Effective Date: August 11, 2006.

Dated: January 31, 2007.

By direction of the Secretary.

Paul J. Hutter,

Acting General Counsel.

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