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Regulation Policy and Management (02REG)
 Department of veteran's Affairs
 810 Vermont Avenue NW, Room 1068
 Washington, DC 20420

February 7, 2015

Re: RIN 2900-AO73 Net Worth, Asset Transfers and Income Exclusions for Needs-Based Benefits

In this comment I am addressing only the treatment of Individual Retirement Accounts ("IRA")
 Stated in the NPRM is one sentence about IRAs

Generally, VA counts income from Individual Retirement Accounts and similar investments, even though such income represents a partial return on principal.

In reality, the method the VA currently uses is counting the **entire principal** of the IRA at the time of application when determining Net Worth and then counting each withdraw as Net Income, the NPRM does not propose to change this. This unduly penalizes the applicant who invested in or delayed withdrawing IRA funds, as our government encourages them to do through deferred tax incentives, versus an applicant who invested after-tax dollars or withdrew funds from the IRA prior to filing.

Take an example of two married Korean War Veteran applicants, Ernie and Bert.

	Ernie	Bert
Age	85	85
Monthly Income	\$2,200 social security	\$2,200 social security
Monthly Medical Expenses	\$4,000 Assisted Living Fee	\$4,000 Assisted Living Fee
IVAP	Negative \$1,729 or \$0	Negative \$1,729 or \$0
Assets	\$30,000 in cash	\$30,000 in IRA
Monthly cash out of asset to pay for shortfall in facility fee other incidentals	\$3,000	\$3,000
Result	Award of \$2,123 per month	Award of \$853 per month

Bert is **denied** \$1,270 per month or \$15,243 per year because the IRA is counted as Income in the Income for VA Purposes ("IVAP") while the Cash that Ernie declared is not used to reduce the amount of benefit he can collect.

Now let's look at a surviving spouse example, Ann & Mary.

	Ann	Mary
Age	85	85
Monthly Income	\$1,600 social security	\$1,600 social security
Monthly Medical Expenses	\$3,000 Assisted Living Fee	\$3,000 Assisted Living Fee
IVAP	Negative \$1,364 or \$0	Negative \$1,364 or \$0
Assets	\$30,000 in Cash	\$30,000 in IRA
Monthly cash out of asset to pay for shortfall in facility fee other incidentals	\$3,000	\$3,000
Result	Award of \$1,149 per month	Award of \$0 per month

Mary is **denied** \$1,149 per month in benefits, even though the IRA already included the IRA in the Net Worth calculation, while Ann's cash has no impact whatsoever on her benefit amount.

I believe the argument that Mary invested her dollars pre-tax and the *Internal Revenue Service* (IRS) is going to count it as income so the VA should also count the IRA distributions as income is flawed -

1. The IRS is not counting the IRA asset for any reason, much less as a barrier to benefits as the VA does
2. The VA does not have to follow IRS regulations. To follow IRS regulations in this instance appears to be cherry picking a regulation for no other reason than to deny claimants with IRAs the benefit; while claimants with the same, and arguably more, access to funds are granted the benefit.
3. If the Bert and Mary have to pay taxes, they have **even less** access to funds than Ernie and Ann, despite coming to the VA with equivalent assets at the time of application.

The fact that someone is heavily penalized for saving funds pre-tax versus post taxes, means war-time veterans are a class of citizen that needs to be informed that the benefits of IRAs and other deferred investment vehicles are not the same for them as they are for non-war-time veterans or even non-veterans. For our war-time veterans and their surviving dependents, there is a deferred tax saving **penalty** – and it's a steep one.

In the above situations, the actual buying power of Mary's Net Worth is seriously diminished in comparison to Ann's. And Bert, thinking he was being the smart one, once again did not do as well as Ernie.

Since most VA employees and Veterans Services Organization ("VSO") tell claimant's to "just file", what are the chances that Bert and Mary would be counseled by VA trained personnel to cash out a portion of their IRAs prior to filing for VA benefits? And further, that cashing out in a year you expect to be in the assisted living for 12 months would maximize the medical expense deduction and put them in the same position as Ernie and Ann? The VA has a strong marketing policy geared towards making veterans feel they cannot get qualified advice from anywhere but the VA or a VSO. Are the VA and the VSOs advising claimants with IRAs to speak with their tax professional **before** filing to mitigate the IRA penalty the VA imposes? The answer is No.

In this example, Mary would likely get a denial and think, oh well, that's it. Then, when all of her assets were depleted, in 11.5 months (\$30,000/\$3,000 monthly draw for expenses), she would be forced on to Medicaid.

Ann, of course would be receiving the \$1,149 per month, so her \$80,000 would last **3.6** years (\$30,000/(\$3,000 monthly draw for expenses - \$1,149 VA Benefit)).

That's quite the penalty for Mary because she foolishly invested in an IRA.

Since we know Mary's denial letter would **not**:

1. explain that she should weigh
 - a. maximizing her IRA withdraw this year taking as much as she can as a withdraw without having to pay taxes or
 - b. minimize her IRA withdraw to limit the time she is denied the VA benefit and
 - c. After determining which mixture of a&b is the most economically advantageous to her
 - d. REOPEN her claim, making sure she withdraws the remaining funds down at a low enough level to maintain the VA benefit in the future

one has to wonder if she will be able to find a VSO to tell her that. If she does, how did having her apply, get denied and then reopen her claim help the back log issue and maintain the integrity of the pension program?

In summary, counting the distributions from IRA's as income is not equitable and results in those applicants with IRAs running out of funds much faster than those with non-tax deferred funds.. If this benefit is about providing assistance to applicants whose income, assets and medical expenses meet a certain threshold, I believe the treatment of IRA distributions undermines the integrity of the program, forces the applicants onto Medicaid sooner and should be addressed in this proposal as it is a major component of Net Worth for our senior veterans and surviving spouses.

Sincerely,

Patricia Servaes