Regulatory Impact Analysis for RIN 2900-AO73

Title of Regulation: Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits

Purpose: To determine the economic impact of this rulemaking.

**The Need for the Rulemaking**: The Department of Veterans Affairs (VA) proposes to amend its regulations governing entitlement to VA pension to maintain the integrity of the pension program and to implement recent statutory changes. The proposed regulations would establish new requirements pertaining to the evaluation of net worth and asset transfers for pension purposes and would identify those medical expenses that may be deducted from countable income for VA’s needs-based benefit programs.

Legal authority. VA has authority under 38 U.S.C. § 501(a) to prescribe all rules and regulations necessary or appropriate to carry out the laws administered by the Department. Because VA administers pension benefits in chapter 15 of title 38 United States Code and parents’ dependency and indemnity compensation (DIC) under chapter 13 of title 38 United States Code, it has authority to prescribe regulations necessary and appropriate for administering these statutes.

Why does VBA want to amend the existing regulations pertaining to pension and its other needs-based benefits? VA is statutorily precluded from paying pension if “it is reasonable” that a claimant should consume some portion of his or her resources before receiving needs-based pension benefits. Currently, VA does not have an established net worth limit for pension recipients and current regulations do not provide specific guidance regarding how to determine whether or not a claimant’s financial resources are sufficient to meet the claimant’s needs without the pension benefit. In addition, current regulations do not prohibit a claimant from transferring or disposing of assets before applying for pension.

VA law provides that VA may deduct a claimant’s out-of-pocket medical expenses from the claimant’s countable income to decrease the claimant’s income, thereby increasing the claimant’s benefit entitlement rate. However, current regulations do not define or describe what VA considers to be a medical expense. This has led to inconsistent determinations regarding medical expense deductions, particularly with respect to room and board deductions for various types of facilities that do not, in fact, provide medical or custodial care.

What would the rulemaking amend? This rulemaking proposes a current (calendar-year 2015) net worth limit of $119,220, which would be indexed for inflation by mirroring cost-of-living increases provided to Social Security beneficiaries. The amount of a claimant’s net worth would be determined by adding the claimant’s annual income to his or her assets. VA would calculate the amount of a claimant’s net worth when it receives an original or new pension claim; a request to establish a new dependent; or information that net worth has increased or decreased.

This rulemaking would also establish a presumption, absent clear and convincing evidence showing otherwise, that asset transfers made during a 36-month look-back period were made to establish pension entitlement. A penalty period, not to exceed 10 years, would be calculated based on the total assets transferred during the look-back period to the extent they would have made net worth excessive. The penalty period would begin the first day of the month that follows the last asset transfer. The applicant would be eligible to receive pension benefits after the penalty period.

In addition, this rulemaking defines and clarifies what VA considers to be a deductible medical expense for all of its needs-based benefits. It provides that generally, payments to facilities such as independent living facilities are not medical expenses, nor are payments for assistance with instrumental activities of daily living. However, there would be exceptions for disabled individuals who require healthcare services or custodial care. The rulemaking would also place a limit on the hourly payment rate that VA may deduct for in-home attendants.

Other changes in the proposed regulation, such as implementing statutory changes pertaining to certain pension beneficiaries who receive Medicaid-covered nursing home care, implementing statutory income exclusions, and implementing a non-statutory income exclusion pertaining to annuities, codify current practice and do not result in additional costs or savings.

Estimated Impact. The proposed rule would result in net savings to VA; these savings are estimated to be $19.3 million in 2016 and $254.5 million for five years. In the context of a cost-benefit analysis, these impacts (referred to in the remainder of this document as “costs” or “savings”) are categorized as transfers. On net, the projected transfer is from Veterans and survivors to VA, but there are some cases in which the opposite holds. Although rule-induced transfers create incentives that may cause changes in the way society uses its resources, lack of data has prevented estimation of the resulting social costs or benefits.

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| **Fiscal Year** | **Caseload (+)** | **Caseload (-)** | **Net Savings($000)** |
| 2016 | 1,175 | (2,784) |  ($19,312) |
| 2017 | 2,150 | (5,106) |  ($37,801) |
| 2018 | 2,963 | (7,048) |  ($55,728) |
| 2019 | 3,640 | (8,150) |  ($65,727) |
| 2020 | 4,206 | (9,077) |  ($75,886) |
| **5-Year Total** |   |   | **($254,454)** |

**Assumptions and Methodology of the Analysis**: This rulemaking makes three distinct changes to current regulations that affect eligibility for Veterans and survivors pension benefits and their respective payments. The costs and savings (to VA) of these changes are individually detailed below. The combined impact of these changes is shown in the table above. For purposes of this cost estimate, an effective date of October 1, 2015, was assumed.

Establishment of a Net Worth Limit for Pension Benefits

As described above, this regulation establishes a current net worth limit of $119,220 to be indexed for inflation based on Social Security benefits. Data provided by the Veterans Benefits Administration (VBA) Office of Performance Analysis and Integrity indicates that, in FY 2014, there were 40 pension applicants (9 Veterans, 31 survivors) awarded benefits whose net worth exceeded the proposed net worth limit. Conversely, there were 1,149 pension applicants (452 Veterans, 697 survivors) that were denied benefits on the basis of net worth that was below the proposed limit. Based on this data, a net 1,109 additional beneficiaries (443 Veterans, 666 survivors) would have received pension benefits in FY2014 under this regulation.

Accessions were projected to future years as a percentage of Veteran and survivor pension accessions from the FY2015 MSR budget. Termination rates from the FY2015 MSR budget were applied to the caseload at the end of each year. Average costs, estimated to be $12,000 for Veterans and $8,547 for survivors in FY 2014 were projected to the out-years based on COLA assumptions from the FY2015 MSR budget. These average costs were applied to the projected caseload to calculate costs, which are shown in the table below.[[1]](#footnote-1)

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| **Establishment of Net Worth Limit** |
| **Fiscal Year** | **Caseload (+)** | **Caseload (-)** | **Cost ($000)** |
| 2016 | 1,175 |  (41) |  $13,070  |
| 2017 | 2,150 |  (75) |  $25,837  |
| 2018 | 2,963 | (103) |  $38,514  |
| 2019 | 3,640 | (127) |  $51,224  |
| 2020 | 4,206 | (146) |  $64,175  |
| **5-Year Total** |  |  | **$192,820**  |

Asset transfer 36-Month Look Back

This regulation would establish a presumption, absent clear and convincing evidence showing otherwise, that asset transfers made by pension applicants within the last 36 months were made for the purposes of establishing pension eligibility. Pension and Fiduciary (P&F) Service estimates based on program knowledge that 1 percent of pension applicants dispose of assets before claiming pension.  This 1 percent assumption was applied to Veteran and survivor pension accession estimates (47,740 and 43,736, respectively in FY 2016) from the FY 2015 MSR budget to estimate the new pension applicants that would be affected each year.

P&F Service also estimates, based on program knowledge, that the average penalty period will be 36 months. The savings were calculated by applying the average annual payment rates for Veteran and survivor pension estimates ($12,920 and $10,588, respectively, in FY 2016) from the FY 2015 MSR budget to the respective caseload. A percentage of the applicants are then assumed to access the pension rolls after the 3 year penalty period. This percentage is based on the percentage of pension recipients that remain on the rolls each year. The resulting annual savings are shown in the table below. Note that the increase to savings slows after the third year due to applicants added to the rolls after the initial 36 month penalty period.

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| **Asset Transfer Look Back** |
| **Fiscal Year** | **Caseload (-)** | **(Savings) ($000)** |
| 2016 |  (914) | ($10,790) |
| 2017 | (1,677) | ($21,213) |
| 2018 | (2,315) | ($31,414) |
| 2019 | (2,329) | ($33,950) |
| 2020 | (2,342) | ($36,748) |
| **5-Year Total** |  |  **($134,114)** |

Income Deductions for Medical Expenses

This regulation defines and clarifies what VA considers to be a deductible medical expense for all of its needs-based benefits. The most significant of these clarifications will impact Veterans and survivors living in an independent living facility. Under current practice, room and board expenses for independent living facilities are sometimes considered deductible medical expenses. This regulation would require that an “assisted living, adult day care, or similar facility” must provide individuals with custodial care 24 hours per day in order for room and board to be considered a deductible medical expense for the purposes of the determination of pension entitlement. This definition would no longer allow for room and board for independent living facilities to be considered a medical expense.

P&F estimates that in 2.5 percent of Veteran and survivor pension cases, pension eligibility is based on deductions for room and board that would not be allowed under the proposed rule and that in 80 percent of those cases, pension benefits would be denied for excessive income. These assumptions were applied to Veteran and survivor pension accession estimates (47,740 and 43,736, respectively in FY 2016) from the FY 2015 MSR budget to estimate the new pension applicants that would be affected each year. Termination rates from the FY 2015 MSR budget were applied to the caseload at the end of each year. Savings were calculated by assuming that each applicant that would be denied for excessive income due to this proposed regulation would have received the average annual payment rates for Veteran and survivor pension ($12,920 and $10,588, respectively, in FY 2016), from the FY2015 MSR budget.

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| **Income Deductions for Medical Expenses** |
| **Fiscal Year** | **Caseload (-)** | **(Savings) ($000)** |
| 2016 | (1,829) |  ($21,593) |
| 2017 | (3,354) |  ($42,425) |
| 2018 | (4,630) |  ($62,829) |
| 2019 | (5,694) |  ($83,001) |
| 2020 | (6,589) | ($103,313) |
| **5-Year Total** |  | **($313,160)** |

Administrative Costs. P&F Service assumes that efficiencies gained in processing pension claims and any resulting general operating expense (GOE) savings would be minimal. Any efficiencies gained could result in improved timeliness in processing pension claims.

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1. There are reasons to believe these impacts could be overestimated or underestimated. If, under the current system, applicants respond to denials by trying again each year until they are granted a pension, then the year-to-year increases shown in the table may be overestimated for two different reasons—first, even in the absence of this rule, some of the applicants denied in the first year would eventually be granted a pension, and second, the number of second-year denials would be below the baseline level of 1,100 because the repeat applicants would have been granted pensions in the first year. On the other hand, if the 1,100-1,200 annual level includes very few repeat applicants, then the projected growth from year to year may be reasonable. (Indeed, VA’s experience has been that roughly 50 percent of applicants denied benefits on the basis of net worth will at some point re-apply and, of those, only 10 percent will apply annually until their net worth is low enough.) However, in this case, there could be a backlog of previously-denied cases that would seek a pension immediately upon finalization because this rule now clarifies that they are eligible—thus producing a bigger estimate for 2016 than what is shown in the table. [↑](#footnote-ref-1)