

right to acquire such stock, received in connection with a transaction occurring on or after March 9, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: December 17, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98-4 Filed 1-5-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A183

Minimum Income Annuity

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of the minimum income annuity, authorized by Public Law 92-425 as amended, to certain surviving spouses. This amendment is necessary to reflect statutory revisions contained in the National Defense Authorization Act for Fiscal Year 1997 that transfers the responsibility for paying this benefit from the Department of Defense (DoD) to VA.

EFFECTIVE DATE: January 6, 1998.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Public Law 92-425, section 4, 86 Stat. 706, 712 (1972) (10 U.S.C. 1448 note), provides for payment of a guaranteed minimum annual income (the so-called minimum-income-widow annuity, hereinafter referred to as the minimum income annuity) to certain surviving spouses of persons entitled to military retired or retainer pay at the time of their death. To be eligible, a person must: (1) Be the surviving spouse of a military retiree who died on or before March 20, 1974; (2) be eligible for VA nonservice-connected death pension; (3) have annual income that is less than the maximum annual rate of pension under 38 U.S.C. 1541(b); and (4) be ineligible to receive an annuity under the Survivor Benefit Plan (10 U.S.C. 1447-1455).

Section 638 of the National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, section 638, 110 Stat. 2422, 2581, transfers responsibility

for the payment of the minimum income annuity to the Secretary of Veterans Affairs from DoD. However, DoD remains responsible for funding this benefit and determining basic eligibility. This transfer was effective on July 1, 1997, and applies with respect to payments of benefits for any month after June 1997.

VA published an interim rule with a request for comments to implement section 638 of Public Law 104-201 in the **Federal Register** of July 3, 1997 (62 FR 35970-72). Interested persons were invited to submit written comments on or before September 2, 1997. No comments were received. The interim rule is now adopted with a technical change noting that, as required by statute, in certain instances, the Department of Transportation will determine whether an individual meets the criteria of section 4(a) of Pub. L. 92-425 as amended.

The Secretary hereby certifies that this regulatory amendment 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. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 23, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the amendment to 38 CFR part 3 published July 3, 1997 (62 FR 35970) is adopted as final with the following changes:

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. Section 3.811 is revised to read as follows:

§ 3.811 Minimum income annuity.

(a) *Eligibility.* The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Transportation has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425 as amended other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment—*(1) *Annual income.* VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum

income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Authority: Pub. L. 92-425 as amended (10 U.S.C. 1448 note); Sec. 638, Pub. L. 104-201, 110 Stat. 2581)

[FR Doc. 98-179 Filed 1-5-98; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AI91

Active Military Service Certified Under Section 401 of Public Law 95-202

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning persons who are included as having served on active duty. This action is necessary because the Secretary of the Air Force has determined that the service of two groups known as "U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945" and "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945" constitutes active military service in the Armed Forces of the United States. The intended effect of this amendment is to reflect eligibility of members of these groups for VA benefits.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7230.

SUPPLEMENTARY INFORMATION: Section 401 of Pub. L. 95-202 states that under

certain circumstances the service of certain groups that had rendered service to the Armed Forces of the United States in the capacity of civilian employment or contractual service shall be considered active duty for the purposes of all laws administered by VA. In order for members of such a group to be eligible for VA benefits, the Secretary of Defense, or his or her designee, must determine that the service of the group constituted active military service and issue discharges to members of the group.

In the *Federal Register* of July 7, 1997 (62 FR 36263-64), the Secretary of the Air Force published a notice that she had determined that for VA purposes the service of two groups constituted active military service: the U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945, and U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945. Under these circumstances, members of these groups are eligible for VA benefits. The effective date of the determination by the Secretary of the Air Force was June 2, 1997. Accordingly, this document amends 38 CFR 3.7(x) to recognize that the service of these groups constitutes active military service for the purposes of laws administered by VA.

Additionally, we have amended the heading and introductory text of 38 CFR 3.7 to make it easier for interested individuals to clearly identify the topic of the regulations. These are not substantive changes.

This document reflects determinations totally within the purview of the Secretary of the Air Force and also reflects statutory determinations. In addition, this document contains other changes which are nonsubstantive. Under these circumstances, the changes made by this document are exempt from the notice-and-comment and from the delayed-effective-date provisions of 5 U.S.C. 553.

Since a notice of proposed rulemaking is unnecessary, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). Nonetheless, 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 RFA, 5 U.S.C. 601-612. This final rule will not affect any small entity.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: December 23, 1997.

Hershel W. Gober,

Acting 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 § 3.7, the section heading and introductory text are revised and new paragraphs (x)(29) and (x)(30) are added to read as follows:

§ 3.7 Individuals and groups considered to have performed active military, naval, or air service.

The following individuals and groups are considered to have performed active military, naval, or air service:

* * * * *

(x) * * *
(29) U.S. Flight Crew and Aviation Ground Support Employees of Northeast Airlines Atlantic Division, Who Served Overseas as a Result of Northeast Airlines' Contract With the Air Transport Command During the Period December 7, 1941, Through August 14, 1945.

(30) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945.

(Authority: Sec. 401, Pub. L. 95-202, 91 Stat. 1449)

[FR Doc. 98-176 Filed 1-5-98; 8:45 am]

BILLING CODE 8320-01-P