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Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-10-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). These comments also are available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown or Tamara Brightwell, Division of Corporation Finance, at (202) 551-3200, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-4553.

SUPPLEMENTARY INFORMATION: In June 2009, the Commission proposed changes to the federal proxy rules that would require a company, under certain circumstances, to include in the company's proxy statement disclosure concerning a shareholder's, or group of shareholders', nominees for director and to include on the company proxy card the names of those nominees.¹ In addition, the proposed rules would require companies to include in their proxy materials, under certain circumstances, shareholder proposals that would amend, or that request an amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations, provided the shareholder proposal does not conflict with the Commission's disclosure rules, including the proposed new rules. The Commission also proposed changes to certain of our other rules and regulations, including the existing exemptions from the proxy rules and the beneficial ownership reporting requirements. The Proposal was

published for comment in the **Federal Register** on June 18, 2009, and the initial comment period closed on August 17, 2009.

In connection with the Proposal, a variety of data and related analyses have been submitted and included in the public comment file,² including data and related analysis by Commission staff. A portion of that data and the related analyses were submitted or added to the public comment file at or after the close of the initial comment period. The Commission is re-opening the comment period to allow interested persons to comment on the additional data and analyses in the public comment file, including the following materials:

- *Report on Effects of Proposed SEC Rule 14a-11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable*, NERA Economic Consulting (submitted on August 17, 2009 by the Business Roundtable);

- *Why Did Some Banks Perform Better During the Credit Crisis? A Cross-Country Study of the Impact of Governance and Regulation*, Andrea Beltratti and Rene M. Stulz (submitted on September 11, 2009 by the Business Roundtable);

- *The Limits of Private Ordering: Restrictions on Shareholders' Ability to Initiate Governance Change and Distortions of the Shareholder Voting Process*, The Corporate Library (submitted on November 18, 2009 by the Shareowner Education Network and the Council of Institutional Investors); and

- Supplemental analysis of share ownership and holding period patterns from Form 13F data by the Commission's Division of Risk, Strategy, and Financial Innovation, dated November 24, 2009.

The Commission is re-opening the comment period for the Proposal with regard to the additional data and related analyses for thirty days from the date of publication of this release in the **Federal Register**.

By the Commission.

Dated: December 14, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-30076 Filed 12-17-09; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AN21

Specially Adapted Housing and Special Home Adaptation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations regarding specially adapted housing and special home adaptation grants. The proposed regulations would incorporate certain provisions from the Veterans Benefits Act of 2003, the Veterans Benefits Improvement Act of 2004, the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, and the Housing and Economic Recovery Act of 2008. The proposed amendments are necessary to conform the regulations to the statutory provisions.

DATES: Comments must be received by VA on or before February 16, 2010.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN21—Specially Adapted Housing and Special Home Adaptation." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9739. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The following public laws revised VA's statutes regarding specially adapted housing and special home adaptation

¹ *Facilitating Shareholder Director Nominations*, Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09 (June 10, 2009) [74 FR 29024].

² See Comment File No. S7-10-09, available at <http://www.sec.gov/comments/s7-10-09/s71009.shtml>.

grants: The Veterans Benefits Act of 2003, Public Law 108–183; the Veterans Benefits Improvement Act of 2004, Public Law 108–454; the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109–233; and the Housing and Economic Recovery Act of 2008, Public Law 110–289. To ensure consistency with statutory changes, we propose to amend VA's regulations addressing eligibility for specially adapted housing, 38 CFR 3.809, and special home adaptation, 38 CFR 3.809a.

Benefits for Members of the Armed Forces

Section 401 of the Veterans Benefits Act of 2003 added subsection (c) to 38 U.S.C. 2101, authorizing VA to provide specially adapted housing grants under section 2101(a) and special home adaptations under section 2101(b) to members of the Armed Forces serving on active duty who have a qualifying disability. This authorization is effective on December 16, 2003. However, section 401 of the Veterans Benefits Improvement Act of 2004, which significantly reorganized 38 U.S.C. 2101, did not retain the authority to provide these benefits to active duty servicemembers. There is no indication in the legislative history of the Act that Congress intended to eliminate eligibility for specially adapted housing and special home adaptation for members of the Armed Forces serving on active duty.

Further, section 105 of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, as a technical correction, re-inserted into section 2101 subsection (c) as added by the Veterans Benefits Improvement Act of 2003 and then made amendments to that subsection. The effective date is December 10, 2004, the effective date of the amendment made by the Veterans Benefits Improvement Act of 2004. Because the benefits were made available as of December 16, 2003, by the Veterans Benefits Act of 2003, this effective date provision in the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 essentially means that the erroneous removal by the Veterans Benefits Improvement Act of 2004 of the language authorizing benefits for active duty servicemembers did not occur. Therefore, we propose to amend §§ 3.809 and 3.809a to incorporate the authority to grant eligibility for these benefits to active duty servicemembers.

Section 2602 of the Housing and Economic Recovery Act of 2008 created new 38 U.S.C. 2101A for eligibility for specially adapted housing and special

home adaptations for members of the Armed Forces who are serving on active duty. The provisions extending eligibility for these benefits to such active duty members of the Armed Forces were moved from 38 U.S.C. 2101 to the new section 2101A. No substantive changes were made to the provisions. We would cite the new section as the statutory authority for our regulations.

38 U.S.C. 1151

Section 304(a) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151, Benefits for persons disabled by treatment or vocational rehabilitation, by adding subsection (c). Subsection (c) states that a qualifying additional disability under section 1151 shall be treated as if it were a service-connected disability for purposes of chapter 21 benefits (specially adapted housing) and chapter 39 benefits (automobiles and adaptive equipment). This is an expansion of the benefits to which veterans disabled by VA treatment or vocational rehabilitation are eligible. This statutory amendment to 38 U.S.C. 1151 is applicable with respect to eligibility for these benefits and services provided by VA on or after December 10, 2004. Public Law 108–454, § 304(b), 118 Stat. 3598, 3611. VA incorporated these changes in its regulation regarding automobiles and adaptive equipment, 38 CFR 3.808, by final rulemaking published August 8, 2006, at 71 FR 44915. We now propose to amend §§ 3.809 and 3.809a to reflect the statutory changes.

VA believes that Congress intended the reference in 38 U.S.C. 1151(c)(1) to “Chapter 21, relating to specially adapted housing,” to include both specially adapted housing under 38 U.S.C. 2101(a) and special home adaptation grants under 38 U.S.C. 2101(b), based upon the following analysis. The comma between “Chapter 21” and “relating to specially adapted housing” in section 1151(c)(1) suggests that the latter phrase is intended merely to describe the content of the chapter rather than to impose a limitation referring to specific provisions in the chapter. In fact, the heading for chapter 21 of title 38, United States Code, which includes both the provisions authorizing specially adapted housing and the provisions authorizing special home adaptation grants, was, when Public Law 108–454 amended section 1151, and still is “Specially Adapted Housing for Disabled Veterans.” Clearly, Congress intended the phrase “specially adapted housing” to comprise both benefits. Also, it is a rule of statutory

construction that statutory provisions are to be read together. *See, e.g., Coit Independence Joint Venture v. Fed. Sav. & Loan Ins. Corp.*, 489 U.S. 561, 573 (1989). In addition to adding subsection (c) to 38 U.S.C. 1151, section 304 of the Veterans Benefits Improvement Act of 2004 added paragraph (2) to 38 U.S.C. 1151(b), which refers to chapter 21 benefits generally. Reading section 1151(b)(2) and (c) together, we interpret the reference in section 1151(c)(1) to include all chapter 21 benefits, *i.e.*, special home adaptation grants as well as specially adapted housing.

As stated, section 304(c) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151(b) by adding paragraph (2). New section 1151(b)(2) provides that, if a judgment, settlement, or compromise of a claim includes an amount specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of title 38, United States Code, and after the judgment, settlement, or compromise becomes final, VA awards benefits under chapter 21 or 39 for the purpose for which the amount was designated, VA must reduce the amount of the chapter 21 or 39 benefits payable by the amount specifically designated for these purposes in the judgment, settlement, or compromise. Section 1151(b)(2) applies to a judgment, settlement, or compromise that became final on or after December 10, 2004. Section 1151(b)(2) also requires that, if the specifically designated amount received as a result of the judgment, settlement, or compromise is greater than the amount of the chapter 21 or 39 benefits awarded, the excess amount received will be offset against benefits otherwise payable under 38 U.S.C. chapter 11. In a final rulemaking published August 8, 2006, at 71 FR 44915, VA incorporated these statutory changes for chapter 39 benefits by amending 38 CFR 3.362, Offset under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a), for claims filed on or after October 1, 1997, and by amending 38 CFR 3.800, Disability or death due to hospitalization, etc., for claims filed before October 1, 1997. We now propose to amend §§ 3.362(e) and 3.800(a)(4) to reflect the statutory changes regarding chapter 21 benefits. We additionally propose to expand current references to “chapter 39” in §§ 3.362(e) and 3.800(a)(4) to “38 U.S.C. chapter 39” for the purposes of clarity and consistency. We intend no substantive change with this proposed amendment.

Loss, or Loss of Use, of Upper Extremities

Section 401 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 2101, authorizing specially adapted housing and home adaptation grants for disabled veterans and active duty service members, by adding “the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows” as a qualifying disability under 38 U.S.C. 2101(a). We propose to amend § 3.809 by adding § 3.809(b)(5) to reflect the amendment to section 2101.

Typographical Error

We propose to amend paragraph (4) of § 3.809(b) by correcting a typographical error in the current phrase “loss of loss of use”. The phrase throughout paragraph (4) should read “loss or loss of use”. We additionally propose to amend paragraphs (3) and (4) of § 3.809(b) by removing the periods at the end of those paragraphs and replacing them with “, or”. Section 2101(a) provides eligibility for veterans with disability that meets any of the criteria listed in section 2101(a)(2)(A) through (E). The current omission of an “or” at the end of § 3.809(b)(3) is an unintentional typographical error. Our amendments will adequately reflect the statute, and we intend no substantive change.

Loan Guaranty Service

Section 101(b) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 amended 38 U.S.C. 2102 to allow three separate grants of assistance under chapter 21. Prior to the amendment, the benefit was a one-time benefit. We would also remove from §§ 3.809 and 3.809a the provisions regarding how often the benefit is available. Specially adapted housing and special home adaptation grants are administered by VA's Loan Guaranty Service, although the Loan Guaranty Service relies on the Veterans Service Centers' determinations of disability to determine eligibility. There is currently a cross-reference in § 3.809 to the Loan Guaranty Service regulations regarding specially adapted housing. We propose to add this same cross-reference to § 3.809a. We believe that a cross-reference to the more comprehensive regulations pertaining to Specially Adapted Housing is appropriate here.

Severe Burns

Section 2603 of the Housing and Economic Recovery Act of 2008 amended 38 U.S.C. 2101 by adding “a severe burn injury” to the list of

qualifying disabilities for specially adapted housing and special home adaptation. The specific type of burn injury is to be determined by the Secretary of Veterans Affairs. We further propose to amend §§ 3.809 and 3.809a to comply with 38 U.S.C. 2101.

The skin provides protection against fluid and electrolyte loss, infection, and radiation, and also provides thermal regulation. Through skin contact, an individual is able to obtain information about the surrounding environment via touch, perception of temperature, and pain. In addition, skin appearance affects identity and interpersonal interactions.

The skin is composed of two layers: the epidermis and the dermis. The major functions of the epidermis are to keep fluid in and protect against infection. The dermis provides the strength and flexibility of the skin. It also has the vascular and neural plexus. The vascular plexus is vital for temperature control, and the neural plexus gives the skin the ability to sense the environment.

There are five types of burns defined by the amount of damage to the epidermis and dermis. Our proposed amendment would not include superficial or superficial partial burns because they heal without residuals. The remaining types of burns are deep partial, full-thickness, and subdermal. For the reasons outlined below, we propose to consider these types of burns to allow eligibility for specially adapted housing.

In the deep partial burn, there is complete destruction of the epidermis and severe damage to the dermal layer. Healing occurs with hypertrophic scars and keloids.

In the full-thickness burn, there is complete destruction of the epidermis and dermis; there may also be some damage to the underlying subcutaneous fat layer. Skin grafts are necessary for this type of burn.

In the subdermal burn, there is complete destruction from the epidermis down to and including the subcutaneous fat. In addition, muscle and bone may be damaged. Extensive surgery is required for this type of burn including the possibility of amputation.

The skin that has experienced the types of burns defined above (deep partial, full-thickness, and subdermal) is never restored to normal. Scar epithelium (skin) is thin, fragile, and prone to chronic ulceration. Scars resulting from these burns cause disfigurement. Residuals of these scars include loss of sweat gland function and nail growth, pigment formation, sensory changes, physical limitations such as

cold and heat intolerance, difficulty with sun exposure, altered sensation, and painful scars. Skin grafts have the same abnormalities.

The most frequent cause of impairment is burn scar contracture. This residual prohibits movement of a joint in its normal range of motion and influences not only the underlying joint but also the adjacent joints. Burn scar contracture is not only limited to the extremities but can occur as a result of burns to the trunk, resulting in postural or respiratory impairments.

VA worked with military hospital resources to assess burn disabilities for adaptive housing. In doing so, we have determined that a severe burn injury is considered at least a deep partial thickness burn. After a burn of at least this depth heals, the skin is no longer capable of its normal function, requiring housing adaptation such as temperature control and modified handles. Burns that are less severe heal without scarring.

Our proposed amendments would provide that, for specially adapted housing in § 3.809, the criteria for eligibility are that the veteran or active duty service member must have full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

For special home adaptation grants under § 3.809a, the proposed eligibility criteria are that the veteran or active duty service member must have deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

We are proposing the additional eligibility criterion of residuals of an inhalation injury for special home adaptation grants under § 3.809a because inhalation injuries can result from the same incidents that cause severe burns. Inhalation injury is due to breathing steam or toxic inhalants such as fumes, gases, and mists present in a fire environment. Toxic inhalants comprise a variety of noxious gases and particulate matter that are capable of producing local irritation, asphyxiation, and systemic toxicity. The Washington Manual of Medical Therapeutics 752 (Wash. U. of St. Louis, 32d ed. 2007).

Some examples of toxic inhalants are acrolein, chlorine, phosgene, and

nitrogen dioxide. Inhalation injuries can occur with or without burns to the skin. However, a significant number of individuals with burns to the skin also have inhalation injury, and the presence of inhalation injury is a determinant of mortality. Inhalation injury can cause long-term respiratory complications, including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease, requiring home adaptation. The specific residuals of such injury would determine the level of home adaptation. Residuals of inhalation injury would be rated under the predominant disability and its evaluative criteria.

Authority Citations

We additionally propose to amend the authority citations in §§ 3.809 and 3.809a to move the authority citations to the end of each section and ensure the citations are the correct authority for the regulatory provisions.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 3

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

Approved: October 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 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. Revise § 3.362(e) to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

* * * * *

(e) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (1) If a judgment, settlement, or compromise covered in paragraphs (b) through (d) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(2) If the amount described in paragraph (e)(1) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151)

3. Revise § 3.800(a)(4) to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

* * * * *

(a) * * *

(4) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (a)(4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or

compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151(b)(2))

* * * * *

4. Amend § 3.809 by:

a. In the section introductory text, removing “38 U.S.C. 2101(a)” and adding, in its place “38 U.S.C. 2101(a) or 2101A(a)” and by removing “veteran” and adding, in its place, “veteran or a member of the Armed Forces serving on active duty”;

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. In paragraph (b)(3), removing “wheelchair,” and adding, in its place, “wheelchair, or”;

e. In paragraph (b)(4), removing “with the loss of loss of use” and adding, in its place, “with the loss or loss of use” and removing “wheelchair,” and adding, in its place, “wheelchair, or”;

f. Adding paragraphs (b)(5) and (b)(6);

g. Removing paragraph (c);

h. Redesignating paragraph (d) as new paragraph (c); and

i. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).

* * * * *

(a) *Eligibility.* A veteran must have had active military, naval, or air service after April 20, 1898. Benefits are not restricted to veterans with wartime service. On or after December 16, 2003, the benefit under this section is also available to a member of the Armed Forces serving on active duty.

(b) *Disability.* A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must be due to:

* * * * *

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

* * * * *

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A).

5. Amend § 3.809a by:

a. In the section introductory text, removing “38 U.S.C. 2101(b)” and adding, in its place “38 U.S.C. 2101(b) or 2101A(a)” and by removing “April 20, 1898,” and adding, in its place, “April 20, 1898, or to a member of the Armed Forces serving on active duty who is eligible for the benefit under this section on or after December 16, 2003,”.

b. Removing the authority citation after the section introductory text.

c. In paragraph (a), removing “veteran” each place it appears and adding, in each place, “member of the Armed Forces serving on active duty or veteran” and by removing the last sentence of paragraph (a).

d. Revising paragraph (b).

e. Removing paragraph (c).

f. Revising the authority citation at the end of the section.

g. Adding a cross-reference immediately after the authority citation at the end of the section.

The revision and addition read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

* * * * *

(b) A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must:

(1) Include the anatomical loss or loss of use of both hands, or

(2) Be due to:

(i) Blindness in both eyes with 5/200 visual acuity or less, or

(ii) Deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or

(iii) Full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or

(iv) Residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

* * * * *

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A, 2104).

Cross-Reference: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§ 36.4400 through 36.4410 of this chapter.

[FR Doc. E9-30096 Filed 12-17-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900-AN34

Board of Veterans' Appeals: Remand or Referral for Further Action; Notification of Evidence Secured by the Board and Opportunity for Response

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Appeals Regulations of the Board of Veterans' Appeals (Board or BVA) to articulate the Board's practice of referring unadjudicated claims to the Agency of Original Jurisdiction (AOJ) for appropriate action, and to describe when it is appropriate for the Board to remand a claim to the AOJ for the limited purpose of issuing a Statement of the Case (SOC). We also propose to amend the Board's Rules of Practice to outline the procedures the Board must follow when supplementing the record with a recognized medical treatise, and to remove the notice procedures the Board must currently follow when considering law not considered by the AOJ. The purpose of these amendments is to codify existing practices derived from caselaw, enhance efficiency, and provide guidance and clarification.

DATES: Comments must be received by VA on or before February 16, 2010.

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.)

Comments should indicate that they are submitted in response to “RIN 2900-AN34—Board of Veterans' Appeals: Remand or Referral for Further Action; Notification of Evidence Secured by the Board and Opportunity for Response.” All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.