

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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 of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

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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 Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. 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) 461-7623.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals involving the same legal issues, 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://www.va.gov/ogc/precedentopinions.asp>.

### VAOPGCPREC 2-2008

Opinion withdrawn and superseded by VAOPGCPREC 3-2008.

### VAOPGCPREC 3-2008

#### Questions Presented

1. Are the rehabilitation and vocational benefits described in section 1631(b)(1) of Public Law 110-181 to be provided by the Veterans Health Administration (VHA) under chapter 17 of title 38, United States Code, or by the Veterans Benefits Administration (VBA) under chapter 31 of that title?

2. Further, if section 1631(b)(1) relates to benefits under chapter 31, clarification is requested of the following issues:

(a) What is the mechanism for establishing eligibility and entitlement to rehabilitation and vocational services under section 1631(b)(1)? For example, would a qualifying individual be required to provide documentation of a Physical Evaluation Board to VA?

(b) What, if any, is VA's responsibility to develop potential eligibility/entitlement under Public Law No. 110-181 if a Veteran or servicemember with no VA service-connected disability

rating or memorandum rating applies for chapter 31 benefits?

(c) Are individuals qualifying under Public Law No. 110-181 required to complete a VA Form 28-1900 or some other form of application before chapter 31 benefits can be provided by VA?

(d) Are the current limitations on services to active-duty servicemembers applicable to individuals who are entitled to rehabilitation and vocational benefits under Public Law No. 110-181 while they remain on active duty? For example, under current law active-duty servicemembers may not receive a subsistence allowance, a revolving fund advance, or a rehabilitation program consisting solely of independent living services under chapter 31.

(e) We believe that certain actions and processes are essential to the provision of services under chapter 31. Is VA precluded from requiring those individuals qualifying under Public Law No. 110-181 to complete an initial evaluation to:

(1) Verify the information/documentation that qualifies the individual?

(2) Determine whether an employment handicap or serious employment handicap exists?

(3) Determine the feasibility of achieving a vocational goal?

(4) Complete any assessment and/or testing needed to begin rehabilitation planning?

#### Held

1. The rehabilitation and vocational benefits described in section 1631(b)(1) of Public Law 110-181 (hereafter referred to as "section 1631(b)(1)") must be provided, respectively, by both the Veterans Health Administration (VHA) under chapter 17 of title 38, United States Code, and the Veterans Benefits Administration (VBA), through the VR&E Service, under chapter 31 of that title.

2. With regard to the provision of benefits under chapter 31, addressed in questions 2 (a) through (e) of your request, please refer to paragraph 5 below. This opinion supersedes our opinion on this subject dated June 25, 2008.

*Effective Date:* December 18, 2008.

### VAOPGCPREC 1-2009

#### Question Presented

a. If a Veteran's surviving spouse who was entitled to the 38 U.S.C. 5310(b) benefit for the month of the Veteran's death dies before receiving the benefit, is VA required to pay to the estate of the deceased surviving spouse the amount of the section 5310(b) benefit the

surviving spouse would have received but for his or her death?

b. If the answer to Question a. is no, if a surviving spouse entitled to the section 5310(b) benefit dies before receiving the benefit, is the benefit, aside from any portion of the benefit that is payable as accrued benefits under 38 U.S.C. 5121 pursuant to the terms of section 5310(b)(2), subject to the accrued benefits provisions of section 5121, in which case a non-spouse survivor would be required to file a claim for the section 5310(b) benefit, and, if so, to what extent is VA required to locate the persons identified in section 5121(a)(2)?

#### *Held*

a. Section 5310(b)(1) of title 38, United States Code, provides a benefit for the surviving spouse of a Veteran who dies while in receipt of disability compensation or pension, if the surviving spouse is not entitled to death benefits under chapter 11, 13, or 15 of title 38 for the month of the Veteran's death. If a Veteran's surviving spouse who was entitled to the section 5310(b)(1) benefit dies before receiving the benefit, VA is not required to pay to the deceased surviving spouse's estate the amount of the section 5310(b) benefit the surviving spouse would have received but for his or her death because entitlement to the benefit would

terminate with the death of the surviving spouse.

b. Section 5310(b)(2) provides in part that, if a check or other payment issued to, and in the name of, the deceased Veteran as a benefit payment under chapter 11 or 15 of title 38, United States Code, for the month in which death occurs is in an amount less than the amount of the benefit a surviving spouse is eligible to receive under section 5310(b)(1), "the unpaid amount shall be treated in the same manner as an accrued benefit under section 5121 of [title 38]." If a surviving spouse entitled to the section 5310(b)(1) benefit dies before receiving the benefit, the section 5310(b)(1) benefit, aside from any unpaid portion of the benefit that is payable as accrued benefits under section 5121 pursuant to the provision quoted above, is not subject to the accrued benefits provisions of section 5121 because the section 5310(b)(1) benefit is a one-time payment for the Veteran's month of death and, therefore, cannot be considered "periodic monetary benefits" for purposes of section 5121.

*Effective Date:* January 22, 2009.

#### **VAOPGCPREC 2-2009**

##### *Question Presented*

Does the Consolidated Security, Disaster Assistance, and Continuing

Appropriations Act, 2009, Public Law No. 110-329, Div. E, tit. II, § 205, 122 Stat. 3574, 3709 (2008), which provides that Department of Veterans Affairs (VA) appropriations may not be used for "examination of any persons" except certain groups, including "beneficiaries entitled to \* \* \* examination under the laws providing such benefits to Veterans," preclude the use of VA appropriations to provide examinations to active duty service members enrolled in the Disability Evaluation System (DES) pilot program?

#### *Held*

Department of Veterans Affairs appropriations may be used to provide an examination to an active duty service member enrolled in the Department of Defense (DoD) Disability Evaluation System pilot program following referral to a DoD Medical Evaluation Board because of a potentially unfitting condition and completion of VA Form 21-0819, VA/DOD Joint Physical Evaluation Board Claim by the member.

*Effective Date:* February 10, 2009.

*Dated:* February 13, 2009.

*By* Direction of the Secretary.

**John H. Thompson,**

*Acting General Counsel.*

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