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Big Rule Changes Proposed for VA Pension Eligibility

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If you are a veteran, the surviving spouse of a veteran or you know anyone who might fall into either category, and if there is even a slight possibility that the individual may consider applying for benefits in the near future, this article is a must read.

In late January, 2015, the Department of Veterans Affairs (VA) proposed a set of regulations that pertain specifically to VA non-service connected pension benefit eligibility. These proposed changes, if implemented, would dramatically and possibly immediately alter the VA Pension eligibility landscape and planning process. The most significant sections of the proposed regulations include: establishment of a defined asset limit, a three year look back period and potentially long penalty periods for asset transfer. Because the VA is acting on their own regulations instead of attempting to bring change through Congress, it is expected that some variation of these regulations will be adopted in late 2015. However, there is still a question as to whether the VA can unilaterally make such changes.

Review of Current VA Benefits

If you are not already familiar with VA Pension with Aid and Attendance benefit requirements, here is a brief review: If a veteran served 90 days or more with at least one day of active duty during a wartime period, received a discharge that was other than dishonorable, the veteran, spouse or widow needs assistance with personal care and the applicant has health care expenses that exceed the individual's or couple's income, the veteran, spouse or widow may qualify for benefits.

Right now the VA does not provide a bright line asset limit to reach in order to achieve eligibility, but instead uses a complicated financial calculation that takes in to account the claimant's (and spouse if married) income, age, health expenses and assets. Frequently, the applicant finds that they are able to gain financial eligibility by working with an attorney to create and fund protective Trusts prior to application. At this time, there is no penalty associated with such transfers to protected Trusts.

This may be about to change.

Proposed VA Regulations

In 2012 The Government Accounting Office (GAO) published a report in which it recommended that the VA make rule changes "to maintain the integrity of VA's needs-based benefit programs." The proposed amendments, however, appear to do nothing more than create more hurdles to eligibility for our most deserving population, the elderly veteran and his or her family. So what do these proposed regulations entail?

1. <u>A 36 month look back period</u>. This is pretty self explanatory. Any assets transferred out of the applicant or spouse's name within 36 months prior to the date of application will be result in a *<u>penalty period</u>* being assessed.

2. <u>A Penalty Period</u>. Depending on the number of assets transferred, the penalty period could be up to 10 years for those who dispose of assets (including transfer to a trust) to qualify for a VA Pension. The penalty would be calculated based on the total assets transferred during the look back period to the extent that they would have exceeded the *<u>new net worth limit</u>*.

3. <u>New Net Worth Limit</u>. The proposed net worth limits will be equal to Medicaid's (Medical Assistance in Pennsylvania) maximum Community Souse Resource Allowance (CSRA) in effect at the time the final rule is published (currently $117,240.00). The amount of a claimant's *<u>net worth</u>* would be determined by adding the claimant's annual income to his or her assets.

4. <u>New definition of "Net Worth"</u>. The applicant's net worth will be defined as "countable" assets plus income for the year. The VA will not consider the claimant's primary residence (same as the current rule) but only to the extent that the residential lot area does not exceed two acres (new). Also, basic living expenses such as food, clothing and shelter (new) or health care costs will lower the asset level.

5. Revision of current rules regarding Unreimbursed Medical Expenses (UMEs).

Because the proposal is still in the Public Comment Period until March 24, 2015, you still have time to make a difference by formally submitting a comment that asks questions and expresses your concerns about the negative impact on our wartime veterans. Public comments may be submitted through http://www.regulations.gov or by mail to: Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington D.C. 20420 or by fax to (202)273-9026. **It is CRUCIAL that the following be included in all correspondence:**

"In response to RIN 2900 - AO73, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits"

So what does this all mean? Congress has introduced legislation at least twice before threatening to radically change the rules, without result. However, this time it appears the VA is taking matters into their own hands without the formal legislative process. It means that if you or someone you know may be eligible for VA Pension now or in near the future, you should contact our firm as soon as possible for an appointment to make sure the optimal plan can be put in to place as soon as possible. The time to start planning is NOW before the new rules changes take effect.