

The Department of Veterans Affairs Proposes Three Year Look-Back for Gifts

On January 23, 2015, the Department of Veterans Affairs (VA) proposed to amend its regulations governing entitlement to VA Pension. The VA helps veterans and their families by providing supplemental tax free income through the Veterans Pension benefit. In addition, veterans who are unable to perform the activities of daily living (such as bathing, dressing, etc) without assistance are entitled to receive additional Aid and Attendance benefits. The VA presumes eligibility for Aid and Attendance if the veteran is institutionalized in a nursing home. The Aid and Attendance benefit helps veterans to offset the high cost of medical care and access care which they otherwise might not be able to obtain. While VA Pension/Aid and Attendance is a needs-based benefit program, there is currently no penalty for applicants who divest themselves of their assets and subsequently apply for benefits.

The proposed regulations would establish new requirements pertaining to pre-application net worth evaluations and asset transfers to qualify for VA pension.

Currently, the VA does not have a bona fide net worth limit. Proposed Section 3.274 would establish a clear net worth limit of \$119,220 (Medicaid's maximum community spouse resource allowance in 2015) which includes both annual income and assets. This amount would be indexed for inflation by adjusting it at the same time and by the same percentage as cost-of-living increases provided to Social Security beneficiaries. Proposed Section 3.275 describes how the VA would calculate assets. The VA would exempt the claimant's primary residence, but only up to 2 acres, from being included as an asset. However, if the residence is sold, the proceeds will be countable toward net worth unless they are used to purchase another residence within the same calendar year.

Proposed Section 3.276 would establish a 36 month look-back period with a penalty period of up to 10 years for those who dispose of assets for less than fair market value. Transfers to trusts or the conversion of assets into a single premium immediate annuity are explicitly defined as transfers of assets for less than fair market value. Penalized gifts also include gifts of money or assets to children or others. The proposed rule establishes a presumption, absent clear and convincing evidence showing otherwise, that asset transfers made during the look-back period were made to establish pension entitlement. The penalty period 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.

If these proposed regulations are implemented, these changes will adversely affect Veterans and their surviving dependents. Before filing an application for VA benefits, it is important to be aware that gifts or transfers of assets could potentially impact your eligibility for VA benefits, as well as result in a penalty period of up to 10 years. The VA is now accepting comments to these proposed rules. Public comments to the proposed changes must be submitted on or before March 24, 2015 through <http://www.regulations.gov>; by mail or hand delivery to: Director, Regulation Policy and 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-A073, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits."

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