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Title 38, Parts 6, 7, 8, 8a and 9

Insurance

Veterans Benefits Administration

Supplement No. 26

Covering period of *Federal Register* issues
through December 1, 2012

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Custom Federal Regulations Service™

Supplemental Materials for *Book D*

Code of Federal Regulations
Title 38, Part 6, 7, 8, 8a and 9

Insurance

Veterans Benefits Administration

Supplement No. 26

5 December 2012

Covering the period of Federal Register issues
through December 1, 2012

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**To ensure accuracy and timeliness of your materials,
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1. Always file your supplemental materials immediately upon receipt.
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FILING INSTRUCTIONS

**Book D, Supplement No. 26
December 5, 2011**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
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9.1-1 to 9.1-4	9.1-1 to 9.1-4	§9.1
9.5-1 to 9.6-1	9.5-1 to 9.6-1	§9.5
9.20-11 to 9.20-12	9.20-11 to 9.20-12	§9.20

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HIGHLIGHTS

Book D, Supplement No. 26 December 5, 2012

Note: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book D (*Insurance*) was originally supplemented twice a year, in April and October. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 26 November 2012, the VA published a final rule, effective 26 December 2012, to amend the Servicemembers' Group Life Insurance (SGLI) regulations in order to provide that, if a stillborn child is otherwise eligible to be insured by the SGLI coverage of more than one servicemember under SGLI dependent child coverage, the child would be insured by the coverage of the child's SGLI-insured biological mother. Changes:

- In §9.1, revised paragraph (k)(1).
- In §9.5, added paragraph (f).



Part 9**Servicemembers' Group Life Insurance
and
Veterans' Group Life Insurance**

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

Source: 40 FR 4135, Jan. 28, 1975, as amended at 61 FR 30134, May 6, 1996,
unless otherwise noted.

§9.1 Definitions.

The following definitions are in addition to those definitions in 38 U.S.C. 101 and 1965:

(a) The term *policy* means Group Policy No. G-32000, which was effective September 29, 1965, purchased from the insurer pursuant to 38 U.S.C. 1966, executed and attested on December 30, 1965, and amended thereafter.

(b) The term *administrative office* means the Office of Servicemembers' Group Life Insurance, located at 80 Livingston Avenue, Roseland, New Jersey 07068.

(c) The term *insurer* means the commercial life insurance company or companies selected under 38 U.S.C. 1966 to provide insurance coverage specified in the policy.

(d) The term *reinsurer* means any life insurance company meeting all the criteria set forth in §9.10 which reinsures a portion of the total amount of insurance covered by the policy and issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).

(e) The term *converter* means any life insurance company meeting all the criteria set forth in §9.10 which issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).

(f) The term *coverage* means Servicemembers' Group Life Insurance or Veterans' Group Life Insurance payable while the member is insured under the policy.

(g) The term *termination of duty* means:

(1) In the case of active duty or active duty for training being performed under a call or order that does not specify a period of less than 31 days—discharge, release or separation from such duty.

(2) In the case of other duty—the member's release from his or her obligation to perform any duty in his or her uniformed service (active duty, or active duty for training or inactive duty training) whether arising from limitations included in a contract of enlistment or

similar form of obligation or arising from resignation, retirement or other voluntary action by which the obligation to perform such duty ceases.

(h) The term *break in service* means the situation(s) in which:

(1) A member terminates duty or obligation to perform duty in one service and enters on duty or assumes the obligation to perform duty in another uniformed service, regardless of the length of time intervening.

(2) A member reenters on duty or resumes an obligation to perform duty as a Reserve in the same uniformed service and 1 calendar day or more has elapsed following termination of the prior period of duty or obligation to perform duty.

(i) The term *disability* means any type of injury or disease whether mental or physical.

(j) The term *total disability* means any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech shall be deemed to be total disability. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

(k) (1) The term *member's stillborn child* means a member's biological child:

(i) Whose death occurs before expulsion, extraction, or delivery; and

(ii) Whose:

(A) Fetal weight is 350 grams or more; or

(B) If fetal weight is unknown, duration in utero is 20 completed weeks of gestation or more, calculated from the date the last normal menstrual period began to the date of expulsion, extraction, or delivery.

(2) The term does not include any fetus or child extracted for purposes of an abortion.

(1) The term *member of the family* as used in § 9.5(e)(2) means an individual with any of the following relationships to a person who is convicted of intentionally and wrongfully killing the decedent or determined in a civil proceeding to have intentionally and wrongfully killed the decedent:

- (1) Spouse;
- (2) Biological, adopted, or step child;
- (3) Biological, adoptive, or step parent;
- (4) Biological, adopted, or step sibling; or
- (5) Biological, adoptive, or step grandparent or grandchild.

[40 FR 4135, Jan. 28, 1975, as amended at 53 FR 17698, May 18, 1988; 61 FR 20135, May 6, 1996; 62 FR 35970, July 3, 1997; 67 FR 52413, Aug. 12, 2002; 70 FR 75946, Dec. 22, 2005; 73 FR 71930, Nov. 26, 2008; 74 FR 26788, June 4, 2009; 74 FR 59479, Nov. 18, 2009 74 FR 62706, Dec. 1, 2009; 77 FR 60306, Oct. 3, 2012; 77 FR 70376, Nov. 26, 2012]

Supplement *Highlights* references: 8(1), 15(1), 17(1), 20(1), 21(1), 22(1), 24(1), 26(1).

Reserved

§9.5 Payment of proceeds.

Proceeds shall be paid in accordance with provisions set forth in 38 U.S.C. 1970 and the following provisions:

(a) If proceeds are to be paid in installments, the first installment will be payable as of the date of death. The amount of each installment will be computed so as to include interest on the unpaid balance at the then effective rate.

(b) If, following the death of an insured member who has designated both principal and contingent beneficiaries and elected to have payment made in 36 equal monthly installments, the principal beneficiary dies before all 36 installments have been paid, the remaining installments will be paid as they fall due to the contingent beneficiary. At the death of such a contingent beneficiary, and in other instances of a beneficiary's death, where there is no contingent beneficiary, the value of any unpaid installments, discounted to the date of his or her death at the same rate used for inclusion of interest in the computation of installments will be paid, without further accrual of interest, in one sum to the estate of the beneficiary or contingent beneficiary last receiving payment.

(c) In instances where payment in installments is made at the election of the beneficiary, upon his or her request, the value of such installments as remain unpaid will be discounted to the date of payment at the same rate used for inclusion of interest in the computation of installments and paid to him or her in one sum.

(d) If a member whose coverage is extended due to total disability converts the group insurance to an individual policy which is effective before he or she ceases to be totally disabled or before the end of 1 year following termination of duty, whichever is earlier, and dies while group insurance would be in effect, except for such conversion, the group insurance will be payable, provided the individual policy is surrendered for a return of premiums and without further claim. When there is no such surrender, any amount of group insurance in excess of the amount of the individual policy will be payable. (Authority: 38 U.S.C. 501)

(e) (1) The proceeds payable because of the death of an individual insured under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance ("decendent") shall not be payable to any person described in paragraph (e)(2) of this section. A Servicemembers' Group Life Insurance Traumatic Injury Protection benefit payable under § 9.20(j)(3) shall not be payable to any person described in paragraph (e)(2) of this section.

(2) The persons described in this paragraph are:

(i) A person who is convicted of intentionally and wrongfully killing the decedent or determined in a civil proceeding to have intentionally and wrongfully killed the decedent;

(ii) A person who is convicted of assisting or aiding, or determined in a civil proceeding to have assisted or aided, a person described in paragraph (e)(2)(i) of this section; and

(iii) A member of the family of a person described in paragraph (e)(2)(i) or (e)(2)(ii) of this section who is not related to the decedent by blood, legal adoption, or marriage.

(3) The Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraph (e)(1) of this section to any person described in paragraph (e)(2) of this section is not payable to such persons even though the criminal conviction or civil determination is pending appeal.

(4) (i) Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit not payable under paragraphs (e)(1) and (e)(2) of this section shall be payable to the first person or persons listed in paragraphs (e)(4)(i)(A) through (F) of this section who are surviving on the date of the decedent's death in the following order of precedence:

(A) To the next eligible beneficiary designated by the decedent in a writing received by the appropriate office of the applicable uniformed service before the decedent's death in the uniformed services in the case of Servicemembers' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit, or in a writing received by the administrative office defined in § 9.1(b) of this part before the decedent's death in the case of Veterans' Group Life Insurance proceeds;

(B) To the decedent's widow or widower;

(C) To the decedent's child or children, in equal shares, and descendants of deceased children by representation;

(D) To the decedent's parents, in equal shares, or to the survivor of them;

(E) To the duly appointed executor or administrator of the decedent's estate;

(F) To other next of kin of the decedent as determined by the insurer (defined in § 9.1(c) of this part) under the laws of the domicile of the decedent at the time of the decedent's death.

(ii) Payment of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance proceeds or a Servicemembers' Group Life Insurance Traumatic Injury Protection benefit to any person under paragraph (e)(4)(i) of this section shall bar recovery of those proceeds or that benefit by any other person.

(f) If a stillborn child is otherwise eligible to be insured by the Servicemembers' Group Life Insurance coverage of more than one member, the child shall be insured by the coverage of the child's insured biological mother. (Authority: 38 U.S.C. 501(a), 1965(10), 1967(a)(4)(B))

[40 FR 4135, Jan. 28, 1975, as amended at 50 FR 12252, Mar. 28, 1985; redesignated and amended at 61 FR 20135, 20136, May 6, 1996; 77 FR 60306, Oct. 3, 2012; 77 FR 70376, Nov. 26, 2012]

Supplement *Highlights* references: 8(1), 24(1), 26(1).

§9.6 Assignments.

Servicemembers' Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.

[40 FR 4135, Jan. 28, 1975; redesignated at 61 FR 20135, May 6, 1996; 62 FR 35970, July 3, 1997]

Supplement *Highlights* reference: 8(1)

The uniformed service will certify whether you were at the time of the traumatic injury insured under Servicemembers' Group Life Insurance and whether you have sustained a qualifying loss.

(h) How does a member make a claim for traumatic injury protection benefits?

(1) (i) A member who believes he or she qualifies for traumatic injury protection benefits must complete Part A of the Application for TSGLI Benefits Form and sign the form.

(ii) If a member is unable to sign the Application for TSGLI Benefits Form due to the member's physical or mental incapacity, the form must be signed by the member's guardian; if none, the member's agent or attorney acting under a valid Power of Attorney; if none, the member's military trustee.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid, the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete an Application for TSGLI Benefits Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Application for TSGLI Benefits Form for a different scheduled loss, the member must submit a completed Application for TSGLI Benefits Form for the new scheduled loss and for each scheduled loss that occurs thereafter and for each increment of a scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§9.20(f)(17)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§9.20(f)(19)), a completed Application for TSGLI Benefits Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a service member suffers a scheduled loss due to a coma, a completed Application for TSGLI Benefits Form should be filed after the 15th consecutive day that the member is in the coma, for which \$25,000 is payable. If the member remains in a coma for another 15 days, another completed Application for TSGLI Benefits Form should be submitted and another \$25,000 will be paid.

(i) How does a member or beneficiary appeal an adverse eligibility determination?

(1) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision. An appeal of an eligibility determination, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted or whether a loss of hearing was total and permanent, must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative, within one year of the date of a denial of eligibility, to the office of the uniformed service identified in the decision regarding the member's eligibility for the benefit.

(2) An appeal regarding whether a member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative within one year of the date of a denial of eligibility to the Office of Servicemembers' Group Life Insurance.

(3) Nothing in this section precludes a member from pursuing legal remedies under 38 U.S.C. 1975 and 38 CFR 9.13.

(j) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or agent or attorney acting under a valid Power of Attorney will be paid the benefit on behalf of the member.

(2) If no guardian, agent, or attorney is authorized to act as the member's legal representative, a military trustee who has been appointed under the authority of 37 U.S.C. 602 will be paid the benefit on behalf of the member. The military trustee will report the receipt of the traumatic injury benefit payment and any disbursements from that payment to the Department of Defense.

(3) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a). (Authority: 37 U.S.C. 602, 603; 38 U.S.C. 501(a), 1980A)

(k) The Traumatic Servicemembers' Group Life Insurance program will be administered in accordance with this rule, except to the extent that any regulatory provision is inconsistent with subsequently enacted applicable law.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0671.)

[70 FR 75946, Dec. 22, 2005, as amended at 72 FR 10365, Mar. 8, 2007; 73 FR 71930, Nov. 26, 2008; 74 FR 26788, June 4, 2009; 76 FR 75460, Dec. 2, 2011; 77 FR 32398, June 1, 2012]

Supplement *Highlights* references: 17(1), 19(1), 20(1), 21(1), 23(1).

End of Part 9