What is being affected?

- The guidelines for determining net worth, asset transfers, and income exclusions for need-based (also called income based or means-tested) benefits.
- This new rule went into effect on October 18, 2018, for all claims filed on or after that date, and service officers should be aware of the rule's changes to Pension, Survivor's Pension, and Parent's DIC qualifications.
- This rule does not affect non-need based benefits, such as compensation and DIC.

Updated Documents

Several forms have been updated:

- 21P-527EZ (issued on 11/1/2018) Note: This will be the form our team members and partners should use vs. the 21P-527.
- 21P-534EZ has been updated and added to VetraSpec
- 21P-527 and 21P-0969 are being updated and will be added to VetraSpec soon. The 21P-0969 may have to be used when completing an application for pension (527EZ or 534EZ).
- We also expect the M21-1 to be updated with additional information on how, for example, the value of unimproved land will be assessed by the VA.
- We will notify you as updates become available.

Areas of Clarification

The VA has sought to clear up the following areas that may cause confusion:

- Create a Bright-Line Net Worth Asset Test
- Create a Maximum Community Spouse Resource Allowance
- Establish a 36 month (three years) look-back period for those who transfer assets during that period, with the presumption that all transfers for less than fair market value were for the purpose of qualify for VA Pension benefits.
- More clearly set forth which medical expenses would be deducted from countable income to qualify for needs-based benefits.

Impact on Customers

The new rule should not affect anyone who currently has a pension claim filed prior to October 18th, or who is already in receipt of a pension, except to the extent that the rule is beneficial: for example, previously unrecognized medical expenses may now be claimed to reduce income. For those pension or survivor's pensions filed since the 18th and not using new forms, VA will just be forced to develop for some of the missing information. In those limited cases, a client may receive correspondence from VA asking for additional income information in order to adjudicate under this new framework.

Net Worth Increase

For net worth, currently VA considers net worth to be of no impact on receiving need-based benefits unless it is over $80,000. If the claimant has net worth of over $80,000, VA decides whether that money should be "spent down" to cover the claimant's expenses before they will be entitled to government benefits. VA currently uses a life expectancy chart to make this determination on net worth.

Under the new rule, the net worth limitation is increased to the maximum community spouse resource allowance (CRSA) for Medicaid purposes, which is $123,600 for 2018. VA studied claimants qualifying for pension in 2014 and found that under the new rule, 1,194 more claimants would have received pension, and only 40 grants would have been denials, had the CSRA amount for 2014 been the net worth limit.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section J - Net Worth, Asset Transfers, and Penalty Periods

Look Back Period

The rule also imposes a 3 year "look-back" period for those who transfer assets to qualify for pension (such as placing assets in an irrevocable trust). This means if a veteran transfers assets to a trust where they do not have access to the funds, or sells them for less than fair market value in order to qualify for pension, those assets would still be considered to be net worth for a period of three years. For comparison sake, Medicaid uses a 5 year "look-back" period. So if a veteran transfers assets and 3 years later applies for pension, they may qualify, but may not qualify for a Medicaid-paid nursing home.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section J - Net Worth, Asset Transfers, and Penalty Periods

Penalty Period

If the veteran applies for need-based benefits during the 3-year look-back period and does not qualify because of excessive net worth, they can be barred from qualifying for a pension for up to 5 years. This works similarly to the number of offset programs that currently exist under VA law: The amount that the veteran transferred in order to qualify will be "offset" based on the MAPR for aid and attendance with one dependent, even if the veteran's actual MAPR is lower. In
effect, VA is saying they are considering that money will be spent on the veteran's care and once it is spent, the veteran may again be entitled to a pension. If considering the amount transferred, the veteran would still be under the net worth limitation, there is no penalty. For example, if the veteran transfers $20,000 and has a remaining net worth of $70,000, this is still under the new net worth limitation, so they will not incur a penalty.

Note that there are a few rules to ensure this new limitation does not disadvantage veterans:

- Qualifying Special Needs Trusts established for helpless children are specifically excluded from net worth, so veterans and survivors can still provide for their helpless adult children after their death.

- When assets were transferred due to fraud, misrepresentation, or unfair business practices, and the veteran can prove this under a "benefit of the doubt" standard, there will not be a penalty period.
- The veteran or claimant will have an opportunity to "cure" the transfer by undoing the transaction or purchasing back all or part of the asset.
- If the veteran retains control over the assets (can spend them at any time), they are still considered as net worth, but will not incur a penalty. Many veterans may choose to transfer assets to trusts as a way of avoiding probate court, but since this type of trust would not reduce their net worth to qualify for a pension, it will not incur a penalty.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section J - Net Worth, Asset Transfers, and Penalty Period

Real Estate Values and Net Worth

The new rule also changes how a land area is calculated in determining a claimant's assets. VA will now consider the residential lot area to be a maximum of 2 acres unless the additional acreage is not marketable. For example, heavily wooded, wetland areas, or areas not able to be split from the lot may not be marketable. Therefore, the value of the primary residence and 2 acres of land will always be excluded from net worth. Only the acreage above 2 acres, which is marketable, will be considered in net worth.

The previous rule was that VA would exclude the value of the primary residence and a "reasonable lot area", so the difference here is establishing a bright line rule of what constitutes a reasonable lot area. Also, the new rule specifies that the non-marketable area will not be included in net worth, which was not previously outlined. For veterans who live in rural areas and have more than 2 acres of land, this may increase their net worth calculation, but it will not be considered as income. The lower the market value of the acreage, the less it will affect entitlement to Pension.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section J - Net Worth, Asset Transfers, and Penalty Period

Custodial Care

Prior to the rule, there was no regulation defining "medical expenses" for VA purposes: the primary source was Fast Letter 12-23. The final definition of custodial care under 38 CFR 3.272(b)(4) now includes regular assistance with two or more ADLS, or supervision because an individual with a physical, mental, developmental, or cognitive disorder requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment. Individuals who require custodial care from an in-home care attendant or within a care facility will be considered a medical expense.

VA also emphasizes in the final rule that the name of a nursing facility, such as "assisted living" versus "independent living" does not matter in order for care and lodging to be a deductible medical expense, it just needs to be a "facility in which a disabled individual receives health care or custodial care". The regulation also provides that care providers (who do not have to be licensed) must staff the facility 24

hours per day, and the facility must be licensed if a license is required in the state or country in which the facility is located.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section G - Pension - Deductible Expenses

ADLS and IADLS

VA has added "ambulating within the home or living area" to its list of activities of daily living, for medical expense reimbursement purposes, in addition to bathing or showering, dressing, eating, toileting, and transferring. Once a veteran needs assistance with two or more ADLs or custodial care, assistance with IADLs by the attendant, such as shopping, food preparation, housekeeping, laundering, managing finances, handling medications, and transportation for non-medical purposes may also be excluded from income as long as they are commensurate with the number of hours that the provider attends to the veteran/survivor.

Source: M21-1, Part V, Subpart iii, Chapter 1, Section G - Pension - Deductible Expenses