

Comments of the Independent Regulatory Review Commission



Department of Military and Veterans Affairs Regulation #13-6 (IRRC #3429)

State Veterans' Programs

April 16, 2025

We submit for your consideration the following comments on the proposed rulemaking published in the February 15, 2025 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Military and Veterans Affairs (Department) to respond to all comments received from us or any other source.

Subchapter A. GENERAL PROVISIONS

1. Section 5a.2. Definitions. – Clarity.

Suggested definitions

The terms “State veterans’ programs,” “character of discharge” or “qualifying character of discharge,” and “rating code sheet” are used throughout the rulemaking. To improve clarity, we suggest these terms be defined in this section of the final-form rulemaking.

The proposed rulemaking defines the terms “Bureau,” “Commission,” and “Department.” Since § 5a.4, relating to waiver of regulations, grants certain power to the “Adjutant General,” we recommend that this term be defined as well.

In addition, the Preamble states that the term “active service” is defined in this section of the rulemaking. However, the term is not defined. We suggest that it be added to the final-form rulemaking.

2. Section 5a.3. Delegation of authority. – Need.

Under this section of the rulemaking, the State Veterans Commission (Commission) “delegates authority to the bureau director and to bureau personnel to make findings and determinations for the State veterans’ programs in this chapter based on applicable statutes, regulations, orders, precedents and the department’s policies and procedures.” The term “Bureau” is defined in § 5a.2 as “The Bureau of Veterans Programs, Initiatives, Reintegration and Outreach in the Office of Veterans Affairs of the department, or its successor.” The Preamble states this rulemaking is jointly promulgated by the Department and the Commission. Since the rulemaking is a product of both agencies, what is the need to delegate authority to a bureau within the Department? We recommend that this section be deleted from the final-form rulemaking.

3. Section 5a.4. Waiver of regulations. – Clarity; Implementation procedures.

This section will allow the Adjutant General, “in his or her sole discretion,” to waive requirements in the chapter for “good cause.” We have two concerns. First, the term “good cause” is vague and should be defined. Second, the process under which waivers are granted is unclear. Must a waiver be requested by a member of the regulated community? Can the Adjutant General grant a waiver upon his or her own initiative or upon the request of a third party? Must a request be in writing? We recommend that the final-form rulemaking be amended to include provisions that guide the implementation of the waiver process.

4. Section 5a.6. Service in war or armed conflict. – Clarity; Reasonableness.

This section addresses how service in war or service in armed conflicts will be determined. Paragraph (2), relating to service in armed conflict, lists specific awards, as recorded on a DD Form 214, DD Form 215, or equivalent that would demonstrate an applicant served in an armed conflict. We have two concerns. First, a commentator noted that the list of awards does not include the Purple Heart Award. Would the recipient of the Purple Heart Award, as documented on the appropriate form, be an eligible applicant for a veterans’ program under this Chapter? If so, this award should be added to Paragraph (2). Second, the term “equivalent” is vague. The final-form regulation should either delete this term or list all the forms that allow an applicant to comply with this section of the rulemaking.

5. Section 5a.8. Appeal procedures. – Clarity.

Subsection (a) states that the appeal procedures relate to programs in Subchapters C, D, E, and F. To improve the clarity of the entire rulemaking, we suggest including appeal procedures in each subchapter and deleting this section in its entirety. The new appeal procedures sections for each subchapter should be added after the sections on adjudication procedures.

Subchapter B. DISABLED VETERNAS’ REAL ESTATE TAX EXEMPTION PROGRAM

6. Section 5a.12. Definitions. – Clarity.

This section provides for definitions of terms used under the Disabled Veterans’ Real Estate Tax Exemption Program. A commentator expresses concerns about the lack of clarity about the definition of “Income” as it relates to income items found on Form 1040—the U.S. Individual Income Tax Return. We ask the Department to clarify this definition so that the regulated community can ascertain which income items from Form 1040 come under this definition.

7. Section 5a.14. Application procedures. – Clarity.

Subsection (e) Supporting documents

Under Subsection (e)(1), the phrase “or other document that proves identity and residence in this Commonwealth and that is acceptable to the board” is vague. The final-form regulation should list all documents that are acceptable to the Board. Similar language also appears in §§ 5a.24(e)(1), 5a.34(e)(1), 5a.44(e)(1), and 5a.54(e)(1).

Subsection (f) Fully developed application

This subsection reads as follow:

The application is considered fully developed when the requirements in subsections (a)—(e) are met. The applicant shall satisfy the requirements within a reasonable time, not to exceed 60 days *except under extraordinary circumstances*, after submitting the application. When the board or the bureau determines an application to be incomplete in form or substance, it will notify the applicant of the deficiencies in writing, allowing for sufficient time to reply. If the applicant has not taken a *substantial step* toward satisfying the requirements in subsections (a)—(e) within the 60-day development period, the application will be disapproved.

The phrases “except under extraordinary circumstances” and “substantial step” are vague. We recommend that the final-form regulation be amended to avoid the ambiguities these phrases may cause for the regulated community. In the alternative, these phrases should be defined in the final-form regulation. We have similar concerns with language found in §§ 5a.24, 5a.34, 5a.44, and 5a.54 of the proposed rulemaking.

8. Section 5a.15. Adjudication procedures. – Implementation procedures; Clarity.

Subsection (c) explains how the Bureau will determine if an applicant has financial need for the real estate tax exemption. We have two concerns. First, under 51 Pa. C.S.A § 8904(1), the Commission is required to adjust the annual income level for eligibility for real estate tax exemption by an amount equal to the change in the Consumer Price Index in the preceding two years and to publish the adjusted income level as a notice in the *Pennsylvania Bulletin*. Subsection (c)(1) codifies that statutory requirement in the regulations of the Commission. To assist the regulated community with complying with this requirement, we suggest that the final-form regulation specify a date or time frame when the revised income level will be published as required.

Second, a commentator has suggested that applicants that are small business owners be allowed to deduct business expenses or losses from their income. Would this type of deduction be allowed under this subsection and the definition of “Income” in § 5a.12, relating to definitions? In the Preamble to the final-form regulation, we ask the Department to explain if this type of deduction is allowable under this rulemaking.

Third, a commentator expresses concerns about untaxed income for federal income tax purposes being counted as income under the real estate tax exemption. We ask the Department to explain how such untaxed income will be treated under this subsection.

9. Section 5a.17. Administration of real estate tax exemption. – Statutory authority; Implementation procedures.

Subsection (f), relating to adjustment to presumptive need level, and Subsection (g), relating to adjustment to cost-of-living expense allowance, include automatic adjustment clauses that will be applied every two years. Under these subsections, the new amounts will be published in the *Pennsylvania Bulletin* and the Department will “ensure appropriate changes to the application

and relevant programmatic material are made.” We have two concerns. First, a similar automatic adjustment mechanism can be found in § 5a.15(c) of this rulemaking. However, the Department has specific statutory authority to implement that adjustment clause. Under what authority is the Department authorized to make similar adjustments to the presumptive need level and cost-of-living allowance? This should be explained in the Preamble to the final-form regulation.

Second, as noted in our comments on § 5a.15(c), we suggest that the final-form regulation specify a date or time frame when the presumptive need levels and cost-of-living allowances will be published in the *Pennsylvania Bulletin*.

We have similar concerns with the automatic adjustment mechanism and publication notices found in § 5a.46(d).

Subchapter C. AMPUTEE AND PARALYZED VETERANS’ PENSION PROGRAM

10. Section 5a.25. Adjudication procedures. – Clarity.

Subsection (c) relates to the notification procedures the Bureau will follow after approval or disapproval of an application. The second sentence of this subsection explains that a request for a higher-level of review by an applicant under § 5a.8(b) of the regulation will require the Bureau to notify the applicant of its determination within 30 days of receiving the request. We believe the clarity of the regulation would be improved if this provision stood alone as its own Subsection (d). We offer a similar suggestion for §§ 5a.35(c), 5a.45(d), and 5a.55(g).

11. Section 5a.26. Administration of pension. – Implementation procedures; Clarity.

Subsection (e) provides procedures on reimbursement of debts. It states, in part, that the Bureau “may seek reimbursement of payments made following the death of a pensioner.” The Preamble states that reimbursement is for debts “typically accrued when the department is not timely notified of the death of a pensioner.” Can the Bureau seek reimbursement of debt related to situations other than the death of a pensioner? Would that action fall under the provisions of this subsection? If not, we recommend that the final-form regulation be amended to specify that this subsection is applicable only to the debt related to the death of a pensioner.

We have a similar concern with § 5a.36(e).

Subchapter E. EDUCATIONAL GRATUITY PROGRAM

12. Section 5a.45. Adjudication procedures. – Reasonableness; Implementation procedures; Clarity.

Subsection (b)(3)(i)

This subsection explains what the Department considers to be an “approved educational institution.” It reads as follows:

An approved educational institution includes any one of the colleges, universities, career and technical education centers, or other higher education institutions within this Commonwealth that are approved by the Veterans and Military Education Division of

the Pennsylvania Department of Education, or its successor, acting in its role as the State Approving Agency under the provisions of 38 U.S.C. Chapters 30, 32, 33, 34, 35 and 36.

This differs from the definition of “educational institution” under Section 5a.42, relating to definitions. That definition is, “As defined in 51 Pa.C.S. § 8701 (relating to definitions).” The statutory definition is:

Any college or university of the State System of Higher Education, a State-aided educational or training institution of a secondary or college grade or other institution of higher education, a business school, a trade school, a hospital school providing training for nurses, an institution providing courses in beauty culture, art, radio or undertaking or embalming, or such other educational training within this Commonwealth approved by the commission.

We have two concerns. First, is there a difference between an “educational institution” as defined in regulation and statute and an “approved educational institution” as described in this subsection? We ask the Department to explain this distinction in the Preamble to the final-form regulation and why both terms are used in the regulation.

Second, to assist the regulated community in determining if a particular institution is approved, we suggest that the Department list those institutions on its website and amend the final-form regulation to state that the link is available on that website.

Subsection (c)(2)

Subsection (c) addresses how the financial need of an applicant will be determined. Subsection (c)(2) states that “certain income from student employment” must be considered and lists “gross income from Federal work-study and non-work-study positions” as an example of student income that must be considered. We have two concerns. First, a commentator has questioned the reasonableness of including federal work study and non-work study income counted when determining the financial need of an applicant. We ask the Department to explain in the Preamble to the final-form regulation why this type of income is included when determining the financial need of an applicant.

Second, this subsection lists examples of benefits, grants, scholarships, and income from student employment that will be considered financial aid by the Department. A list of examples does not set a binding norm that is enforceable. We recommend that the final-form regulation be amended to delete the list of examples and add a definitive list of benefits, grants, scholarships, and income types that will be considered financial aid under this subsection.

13. Miscellaneous – Clarity; Need.

Subsection 5a.34(c) should be amended to include the title *Certification of information*. This would make the subsection consistent with § 5a.24(c). We have the same suggestion for §§ 5a.44(c) and 5a.54(c).

The italicized language in the subsections listed below is not regulatory language and does not set a binding norm. A regulation has the full force and effect of law, and the italicized language

below is more background and guidance information than it is regulatory language. If such information is necessary for the regulated community, we suggest that the Department remove it from this rulemaking and include it in a guidance document.

- § 5a.5(b) -The burden of proving eligibility and need for a benefit under this chapter rests with the applicant. *Accredited veterans services officers at the county offices of veterans affairs are available to assist applicants with the development of applications at no cost. Under 51 Pa.C.S. § 1712(3) (relating to specific duties), the department owes a duty to aid the Commonwealth's veterans and their dependents in filing and prosecuting claims as well. This assistance is provided strictly by outreach personnel within the department.*
- § 5a.7(c) - *Under certain circumstances, the U.S. Department of Veterans Affairs may approve a putative common-law spouse for Federal spousal or survivors' benefits even though the marriage is not valid in the Commonwealth. These determinations made by the U.S. Department of Veterans Affairs will have no bearing on the State veterans' programs in this chapter.*
- § 5a.15(b)(2)(i) - Qualifying character of discharge will be determined in accordance with 51 Pa.C.S. § 104 (relating to character of discharge). *This requirement is consistent with the U.S. Department of Veterans Affairs' character of discharge requirement for disability compensation at 38 CFR 3.12 (relating to benefit eligibility based on character of discharge). Therefore, a veteran who has been awarded disability compensation will be considered to have the qualifying character of discharge.*
- § 5a.15(b)(2)(iii) - *While there is no specific requirement for active service in 51 Pa.C.S. Chapter 89 (relating to disabled veterans' real estate tax exemption), active service is a requirement for the underlying Federal disability compensation rating. The U.S. Department of Veterans Affairs determines active service for the purpose of disability compensation in accordance with 38 CFR 3.6 (relating to duty periods) and 38 U.S.C. § 106 (relating to certain service deemed to be active service). Therefore, if a veteran receives disability compensation, the veteran's qualifying active service has already been positively adjudicated. To qualify for a real estate tax exemption, the veteran must have served at least 1 day of that qualifying period of active service in a war or armed conflict.*
- § 5a.15(b)(3) - To qualify for the exemption, the veteran must be rated by the U.S. Department of Veterans Affairs for service-connected total or 100% permanent disability, blindness, loss of two or more limbs or paraplegia, in accordance with 38 CFR Chapter I Part 4 (relating to schedule for rating disabilities). *The U.S. Department of Veterans Affairs rating code sheet will show the veteran's qualifying disability compensation ratings. At the discretion of the board, a current U.S. Department of Veterans Affairs tax abatement or summary of benefits letter showing total or 100% permanent disability may also be acceptable. The tax abatement or summary of benefits letter does not, however, provide sufficient detail to adjudicate an application based on blindness. Where these documents conflict, information in the rating code sheet will govern.*
- § 5a.15(b)(3)(i) - Blindness, as defined in § 5a.12 (relating to definitions), must result in a rating of 90%—100% to qualify for the tax exemption. *The definition of "blindness" in § 5a.12 is consistent with the definition of "blind veteran" for the blind veterans' pension*

at 51 Pa.C.S. § 7701(a) (relating to blind veteran's pension). For this reason, an applicant should consider submitting an application for pension with the application for tax exemption.

- *§ 5a.15(b)(3)(iii) - An award of dependency and indemnity compensation (DIC) to a surviving spouse by the U.S. Department of Veterans Affairs is not always indicative of a qualifying disability rating under 51 Pa.C.S. Chapter 89. When the veteran was never rated for disability during their lifetime, DIC eligibility is determined by establishing whether a service-connected disability was the cause or a contributing cause of the veteran's death. The disability itself, however, is not rated. In this situation, if a 100% disability rating is the only possible rating in 38 CFR Chapter I Part 4 for a service-connected disability underlying the award of DIC, the disability will be considered qualifying.*
- *§ 5a.17(b)(2) - Nothing in this subsection is intended to prohibit or discourage taxing authorities from backdating or prorating tax exemptions irrespective of the date upon which an applicant files the application, extending tax exemptions irrespective of the date of expiration or exonerating back taxes as a matter of grace in reasonable and justifiable circumstances.*