

## Department of Veterans Affairs

## § 21.7302

assistance through having met the eligibility requirements of § 21.7042.

(Authority: 38 U.S.C. 3017(a))

(c) *Payee.* (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.

(i) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance Policy,

(ii) The surviving spouse of the individual,

(iii) The surviving child or children of the individual, in equal shares,

(iv) The surviving parent or parents of the individual in equal shares.

(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.

(Authority: 38 U.S.C. 3017(a)(2); Pub. L. 100-689) (July 1, 1985)

(d) *Amount of death benefit.* (1) The amount of any payment made under this section shall be equal to—

(i) The amount reduced from the individual's basic pay as provided in § 21.7042(f) less—

(ii) The total of—

(A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and

(B) The amount of accrued benefits paid or payable with respect to the individual.

(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.

(Authority: 38 U.S.C. 3017 (b) and (c); Pub. L. 100-689) (July 1, 1985)

[56 FR 20136, May 2, 1991, as amended at 57 FR 15026, Apr. 24, 1992; 61 FR 6791, Feb. 22, 1996]

### ADMINISTRATIVE

#### § 21.7301 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by him or her, to make findings and decisions under 38 U.S.C. chapter 30 and the applicable regula-

tions, precedents and instructions concerning the program authorized by that chapter.

(Authority: 38 U.S.C. 512(a))

(b) *Other delegations of authority.* In administering benefits payable under 38 U.S.C. chapter 30, VA shall apply § 21.4001(b), (c)(1) and (2) and (f) of this part in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 512(a), 3034, 3696; Pub. L. 98-525)

#### § 21.7302 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of a VA facility of original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7303 of this part. (See §§ 19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 511)

(b) *Decisions of an activity within VA.* Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 511)

(c) *Character of discharge determinations.* (1) A determination of the character of a veteran's discharge made by a competent military or naval authority or by the Coast Guard is binding upon VA.

(2) Any determination of the character of a veteran's discharge made by VA in connection with the veteran's eligibility for a benefit other than educational assistance under 38 U.S.C.

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chapter 30, shall not affect his or her eligibility for educational assistance.

(Authority: 38 U.S.C. 3011(a), 3012(a); Pub. L. 98-525)

#### § 21.7303 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511; Pub. L. 98-525)

#### § 21.7305 Conflicting interests.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4005.

(Authority: 38 U.S.C. 3034, 3036)

[62 FR 55761, Oct. 28, 1997]

#### § 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4209.

(Authority: 38 U.S.C. 3034, 3690)

[62 FR 55761, Oct. 28, 1997]

#### § 21.7310 Civil rights.

(a) *Delegation of authority concerning Federal equal opportunity laws.* The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this chapter. These equal opportunity laws are:

(1) Title VI, Civil Rights Act of 1964;

(2) Title IX, Education Amendments of 1972, as amended;

(3) Section 504, Rehabilitation Act of 1973; and

(4) The Age Discrimination Act of 1975.

(b) *Role of State approving agencies.* In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Under Secretary for Benefits may use the

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State approving agencies as provided in § 21.4258(d).

(Authority: 42 U.S.C. 2000)

[62 FR 55761, Oct. 28, 1997]

#### § 21.7320 Procedural protection; reduction following loss of dependent.

(a) *Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent.* Except as provided in paragraph (b) of this section, VA will not reduce an award of educational assistance following the veteran's loss of a dependent unless:

(1) VA has notified the veteran of the adverse action; and

(2) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(b) *No advance notice required in certain situations.* When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(1) VA will not send either an advance or a prereduction notice as stated in paragraph (a) of this section; but

(2) VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[58 FR 63530, Dec. 2, 1993]

### Subpart L—Educational Assistance for Members of the Selected Reserve

AUTHORITY: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as stated in specific sections.

SOURCE: 53 FR 34740, Sept. 8, 1988, unless otherwise noted.

#### § 21.7500 Establishment and purpose of educational assistance program.

An educational assistance program for certain members of the Selected Reserve is established to encourage