

TRAINING MODULE 2
Study Plan
GENERAL PROVISIONS, DEFINITIONS
& PERIODS OF WAR

Objective:

To become familiar with the various benefits administered by the U.S. Department of Veterans Affairs (VA), and to become familiar with the general provisions and definitions used in the context of these benefits. Also, become familiar with the various definitions of "wartime service" for purposes of different agencies. Additional definitions and more specific information are in the module for each specific benefit.

References:

Title 38, U.S. Code
38 Code of Federal Regulations.
VA Pamphlet: 80-05-1, *Federal Benefits for Veterans and Dependents*.

Instructions:

Study all of the reference materials available to become familiar with general provisions governing VA benefits, and the definitions of terms used in connection with adjudication of claims and awarding of benefits. Special attention should be given to the dates of various periods of war, and to distinguish between benefits that require wartime service from the ones that do not.

Summary:

The Department of Veterans Affairs, its activities, organization, and the scope of the benefits it administers are all authorized under various statutes enacted by Congress. These laws are codified in Title 38 of the U.S. Code (USC or USCS). Section 501 of 38 USC gives the Secretary of The Department of Veterans Affairs the authority to promulgate such regulations as necessary to administer the law. The rules and regulations established for this purpose are codified in 38 Code of Federal Regulations (CFR).

DEFINITIONS

1. (Unless otherwise specified, when section or chapter is mentioned in this part, it is referencing Title 38, United States Code.)
 - a. Benefits. "Benefits" available to veterans and their dependents authorized by laws administered by the VA.
 - b. Veteran. "Veteran" means person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. (Sec. 101(2), 1301)

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- c. Veteran of Any War. "Veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war. (Sec. 101 (12))
- d. Active Military, Naval, or Air Service. "Active military, naval, or air service" includes active duty; any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such training. (Sec. 101 (24))
- e. Compensation. "Compensation" means a monthly payment made to the veteran because of a service-connected disability or to a [surviving] spouse, child or dependent parent of a veteran because of a service-connected death occurring before January 1, 1957. (Sec. 101(13))
- f. Dependency and Indemnity Compensation. "Dependency and Indemnity Compensation" means a monthly payment made to a surviving spouse, child or parent because of a service-connected death occurring after December 31, 1956, or the election in the case of such a death occurring before January 1, 1957. (Sec. 101 (14))
- g. Pension. "Pension" is a monthly or (other periodic payment) payment to a wartime veteran because of service, age or (nonservice-connected disability), or to a surviving spouse or child of a veteran because of the nonservice-connected death of the veteran. (Sec. 101 (15))
- h. Service Connected. "Service connected" means with respect to disability or death, that such disability was incurred in or aggravated during service, or the death resulted from a disability incurred or aggravated in line of duty in the active military, naval, or air service. (Sec. 101 (16))
- i. Nonservice Connected. "Nonservice connected" means with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service. (Sec. 101 (17))
- j. Preservation of Disability Ratings. A disability, which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes, will not be reduced to less than such evaluation except upon a showing that such a rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes, which has been in force for 20 or more years, will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will

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be computed from the effective date of the evaluation to the effective date of reduction of evaluation. Service connection for any disability or death which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud, or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the finding of service connection to the effective date of the rating decision severing service connection. The protection afforded in this section extends to claims for dependency and indemnity compensation or death pension. (Secs. 110, 1159, 5112; 38 CFR 3.951, 3.957)

- k. **Line of Duty.** Injury or disease incurred on active duty, including authorized leave, unless such injury or disease was the result of the veteran's own willful misconduct. (Sec. 105; 38 CFR 3.1, 3.301)
 - l. **Willful Misconduct.** An act involving deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences.
2. The periods recognized by VA as constituting wartime service (excluding those wars which began prior to 1900) are:
- ***Mexican Border Period:*** May 9, 1916 to April 5, 1917, if the veteran served in Mexico, on the borders thereof or the waters adjacent thereto. (Authority: 38 U.S.C. 101(30))
 - ***World War I:*** April 6, 1917 through November 11, 1918, inclusive. If the veteran served with U.S. forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran also served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.
 - ***World War II:*** December 7, 1941 through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947 is considered World War II service.
 - ***Korean Conflict:*** June 27, 1950 through January 31, 1955, inclusive.
 - ***Vietnam Era:*** February 28, 1961 through May 7, 1975, inclusive, if the veteran served in Vietnam during that period. In all other cases, August 5, 1964 through May 7, 1975, inclusive. (Authority: 38 U.S.C. 101(29))
 - ***Persian Gulf War:*** August 2, 1990 through a (future) date to be prescribed by Presidential proclamation or law. (Authority: 38 U.S.C. 101(33))

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3. ACTIVE DUTY. Active duty means full-time service:
 - a. In the Armed Forces. (Other than active duty for training.)
 - b. Service as a cadet at the US Military, Air Force, or Coast Guard Academy; or as a midshipman at the U. S. Naval Academy.
 - c. Travel time authorized to report for duty is included in active duty. (Sec. 101 (21))

4. ACTIVE DUTY FOR TRAINING “Active duty for training” means:
 - a. Reservists on full-time duty for training purposes in the Armed Forces.
 - b. Full-time duty for training purposes performed by a commissioned officer of the Reserve Corps of the Public Health service on or after July 29, 1945, or before that date under circumstances affording entitlement to full military benefits, or at any time for purposes of Dependency and Indemnity Compensation (DIC);
 - c. Members of the National Guard or Air National Guard of any state, performing full-time training duty, under title 32, 316, 502, 503, 504, or 505, or the prior corresponding provisions of law;
 - d. Annual training duty by a member of a Senior ROTC (Reserve Officers’ Training Corps) program when the member is ordered to duty for the purpose of field training or a practice cruise for a period of not less than 4 weeks. A “senior” ROTC program is a 2- or 4-year program at the college or university level.
 - e. Including travel to and from such duty (Sec. 101 (22)).

5. INACTIVE DUTY TRAINING. “Inactive duty training” means
 - a. Duty, other than full-time duty, prescribed for Reservists, including commissioned officers of the Reserve Corps of the Public Health Service by the Secretary concerned under 37 USC 206 or any other provision of law;
 - b. Special additional duties authorized for Reservists including commissioned officers of the Reserve Corps of the Public Health Service, performed by them on “a voluntary” basis;
 - c. Training other than active duty for training by a member of or applicant for membership in the Senior Reserve Officers’ Training Corps prescribed under chapter 103 of title 10, United States Code;

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- d. Inactive duty training does not include work or study performed in connection with correspondence courses, attendance at an educational institution in an inactive status, or duty performed as a temporary member of the Coast Guard Reserve. (Sec. 101 (23));
- e. Travel time authorized to perform active duty for training or inactive duty for training includes authorized travel to and from such duty. (Sec. 106 (e), Op. G.C. 1-64).

6. RELATIONSHIP BY MARRIAGE

- a. Spouse. The term "spouse" means a person of the opposite sex whose marriage meets the requirements of subparagraph (b) below. (Sec. 101 (3), Public Law 92-540, 38 CFR 3.50(c), 3.52)
- b. Marriage. Means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the rights to benefits accrued. In order to prove relationship by marriage, proof of the dissolution of prior marriages, of either party, by death, divorce, or annulment is required. See subparagraph c below. Evidence in one of the following forms may be acceptable if the higher type evidence is not of record.
 - 1. Certified copy or the public record or an abstract of the public record;
 - 2. Certified Copy of the church record;
 - 3. Official report from service department as to marriage which occurred during service;
 - 4. Affidavit of clergyman or magistrate who officiated;
 - 5. The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;
 - 6. Affidavits or certified statements of two or more eyewitnesses to the ceremony
 - 7. Any other secondary evidence, which reasonably supports a belief by VA that a valid marriage actually occurred. (38 CFR 3.50, 3.205)
- c. Valid Marriage. The legality of a marriage will be accepted on the basis of proof of marriage, either ceremonial or common law. In the absence of conflicting information, the claimant's certified statement concerning the date, place, and circumstances of dissolution of any prior marriages may be accepted as establishing a valid marriage. When necessary, because of insufficient or conflicting information, proof of termination of a prior marriage will be shown by proof of death, or a certified copy or abstract of final decree of divorce, or annulment specifically citing the effects of the decree. In those instances when the claimant being assisted by a (VA) Veterans Service Representative does not have the necessary evidence, he or she will send the request to the proper Custodian of Public Records for the document. (Sec. 103, 38 CFR 3.1(j), 3.205)

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- d. **Surviving Spouse.** Means a person of the opposite sex who is a widow or widower at the time of the veteran's death, who lived with the veteran continuously to date of death except when there was a separation caused by the veteran without fault of the spouse. (38 CFR 3.50(c), 3.52)
- e. **Deemed Valid Marriage.** Where an attempted marriage of claimant to the veteran was invalid because of a legal impediment, the marriage will nevertheless be deemed valid if:
 - 1. The marriage occurred one year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage, (or upon the birth of a veterans child) and
 - 2. The claimant entered into the marriage without knowledge of the impediment, and
 - 3. The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death, and
 - 4. No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death. (Sec. 103 (a), 38 CFR 3.52)
- f. **Legal Impediment.** In addition to other evidence to prove the "marriage," the claimant is required to submit a signed statement that he or she had no knowledge of an impediment to marriage to the veteran. His or her statement will be accepted as proof of the fact in the absence of information to the contrary. The Administrator's Decision 979, April 2, 1962 provides for the possible recognition of a "common-law" marriage consummated in good faith in one of the several States that do not recognize the common law.
- g. **Continuous Cohabitation.** The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be met when the evidence show there was no separation due to the fault of the surviving spouse. Temporary separations, which occur including those caused through fault of either party, will not break the continuity of the cohabitation. If the evidence establishes that the separation was by mutual consent for purposes of convenience, health, business, or any other reason, which did not show intent on the part of the surviving spouse to desert the veteran-spouse, the continuity of the cohabitation will not be considered broken. If the surviving spouse was separated from the veteran prior to his or her death, assist in the preparation of a statement. Use VA Form 21-4138, Statement in Support of Claim, because it contains the penalty clause. The statement must include all the following information:
 - 1. All of the facts and circumstances leading up to and attending the separation
 - 2. Date of separation
 - 3. Spouse's addresses, with dates, during the separation
 - 4. Places of residence of the veteran during the separation

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5. Whether or not there was any separation agreement entered into between the veteran and the spouse; if so, a certified copy of the agreement must be attached.
 6. Whether or not either the veteran or the spouse ever secured, or applied for, a divorce
 7. Any other facts pertaining to the separation, efforts for reconciliation, communications, etc.
 8. Whether the surviving spouse has held himself or herself out as the spouse of anyone, that is, lived with anyone as man and wife, since the veteran's death.
 9. The surviving spouse's statement should be supported by affidavits or certified statements from two or more responsible persons, preferably disinterested, who must state their ages, and the facts to which they subscribe, relating facts only as they know them, not as they were told or as they understood. Hearsay evidence is worthless. The reason for subparagraphs (2), (3), and (4) above is that it may be necessary to require certification that a divorce was not obtained in any of the various jurisdictions or residence. (Sec. 101 (3); 38 CFR 3.53)
- h. **Common-Law Marriage.** Common-law marriage is an informal agreement by a man and woman, who are both legally free to contract a marriage, to live as man and wife. Once established in a jurisdiction that recognizes the validity of common-law marriage, the marriage is legal and binding and each party to the marriage assumes all of the responsibilities of marriage incident to the laws of any jurisdiction where the parties may reside thereafter. When applying for benefits based on a common-law marriage, the claimant should furnish VA Form 21-4170, Statement of Marital Relationship, and at least two supporting statements on VA Form 21-4171, Supporting Statement Regarding Marriage. The VA 21-4170 may be offensive to a surviving spouse who is requested to establish a common-law marriage when she or he alleges a ceremonial marriage, but cannot produce the necessary evidence to prove it. When a ceremonial marriage cannot be proved by the best evidence (the public record), it would be proper to ask for secondary proof of ceremonial marriage such as statements from witnesses present at the ceremony. If there is a failure of this type of proof, the surviving spouse should then be asked for evidence of a "marriage agreement," using this euphemism for "common-law marriage," which would avoid the offensive or indelicate implication of the latter term. (M21-1, part III, par. 6.08)

7. REMARRIAGE OF SURVIVING SPOUSE

- a. **Remarriage.** Remarriage or inference of remarriage of a surviving spouse is a bar against receiving benefits based on that veteran's services for death pension only. If remarriage is dissolved by death or divorce then the remarried spouse is eligible to reapply for DIC. (See note)
- b. **Void and Annulled Marriage.** The remarriage of the surviving spouse shall not bar the furnishing of benefits to the surviving spouse if the remarriage is void or has been annulled by a court with basic decree annulment authority unless VA determines that the annulment was secured through fraud by either party or by collusion. (Sec. 103; 38 CFR 3.55)

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- c. Annulment of Marriage. A certified copy or certified abstract of the decree of annulment is required. A decree will be accepted unless there is a reason to question the basic authority of the court to make annulment decree or there is evidence indicating that the annulment may have been obtained through fraud or collusion. (38 CFR 3.55, 3.207 (b); M21-1, part III, par. 6.15)
- d. Court Decisions---Unremarried Surviving Spouse. A decision given by a federal court holding that a surviving spouse of a veteran has not remarried will be followed in determining eligibility for pension, compensation or DIC. (38 CFR 3.24)

Note: 38 CFR 3.55(a)(2). On or after January 1, 1971, remarriage of a surviving spouse terminated prior to November 1, 1990, or terminated by legal proceedings commenced prior to November 1, 1990, by an individual who, but for the remarriage, would be considered the surviving spouse, shall not bar the furnishing of benefits to such surviving spouse provided that the marriage:

- (i) Has been terminated by death, or
- (ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by the surviving spouse or by collusion.

8. RELATIONSHIP OF CHILD

- a. Child. Means an unmarried child of the veteran who is under the age of 18 years; who became permanently incapable of self-support before attaining age 18; or who between the ages of 18 and 23 is pursuing a course of instruction at an approved educational institution; and
 - 1. Who is a legitimate child or
 - 2. A legally adopted child, (38 CFR 3.87(c)), or
 - 3. A stepchild who is a member of the veteran's household or was a member at the time of the veteran's death, or
 - 4. An illegitimate child, when acknowledged in writing by the veteran. Also if he has been judicially decreed to be the father of the child, or if otherwise shown by evidence satisfactory to VA to be the father of the child, or
 - 5. A child living in the veteran's household at the time of death, who is adopted by the surviving spouse within two years after the veteran's death. The child must not have been receiving regular support from any individual except the veteran and his or her spouse, or from any public or private welfare organization, which furnished assistance for children. Payment of benefits on behalf of such child will be effective from the date of adoption. (Sec. 101 (4), 38 CFR 3.57 (c)).

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- b. Legitimate Child. When necessary to prove legitimacy of a child, prove legality of marriage of the mother or father of the child to the veteran, or show it is legitimate by state laws together with birth certificate or other evidence outlined below.
- c. Illegitimate Child. As to the mother, proof of birth is all that is required; as to the father, proof of relationship will be as follows:
 - 1. Acknowledgment in writing, signed by him
 - 2. Evidence identifying him as the child's father by judicial decree ordering him to contribute to the child's support or for any other purpose;
 - 3. Any secondary evidence which supports relationship, such as:
 - a. A certified copy of the public record of birth or church record of baptism showing that the veteran was the informant and was named the father of the child
 - b. Statements of disinterested persons who know that the veteran accepted the child as his.
 - c. Information from service departments or public records such as school or welfare agencies which show that with his knowledge the veteran was named as the father of the child. (38 CFR 3.210(b))
- d. Adopted Child. A copy of the decree of adoption or a copy of the adoption placement agreement. (38 CFR 3.210(c))
- e. Child Adopted by Spouse After Death of Veteran. A statement of the adoptive parent or custodian of the child will also be required to show that the child was a member of the veteran's household at the date of death, was adopted by the veteran's spouse within two years after the veteran's death, and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support from any person other than the veteran, his or her spouse, or from any public or private welfare organization which furnishes assistance to children. (38 CFR 3.210)
- f. Stepchild. Evidence of relationship will consist of proof of birth; evidence of marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran's household, or was a member of a deceased veteran's household at the time of death. (38 CFR 3.210)
- g. Children of Surviving Spouses. A "marriage deemed valid" extends all benefits to all children of the surviving spouse as described in section 101 (4).
- h. Age. For proof of age see paragraph 11 below.

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9. RELATIONSHIP OF PARENTS

Parents. Means a father, a mother, a father through adoption, a mother through adoption, or a person who stood in the relationship of a parent to the veteran for not less than 1 year at any time before entry into active service; or

- a. If two persons stood in the relationship of a father or a mother for 1 year or more, the person who last stood in that relationship before the veteran's last entry into service.

10. PROOF OF RELATIONSHIP (M21-1, part III, Ch. 6 and 38 CFR 3.201 through 3.213)

Proof of relationship is required in all cases. The acceptable forms of evidence are stated in 38 CFR 3.205 and 3.209. Preference is given to certified copies or abstracts from public records. When these are unavailable, alternative evidence forms listed in the regulations may be used.

11. PROOF OF AGE

- a. Normally, the veteran's or surviving spouse's statement as to age and date of birth will be accepted when in agreement with other records.
- b. The following types of evidence may be used when necessary to prove age or date of birth. The evidence is listed in the order preferred: (38 CFR 3.202, 3.204, 3.208, 3.209)
 1. A copy or abstract of the public record of birth. Records established more than four years after birth will be acceptable if not inconsistent with material of record in VA.
 2. Copy or church record of baptism. Records established more than four years after birth must be consistent with material of record in VA, which include at least one reference to age or relationship which was made at a time when such reference was not essential to establishing entitlement to the benefit claimed.
 3. Official report from service department as to birth which occurred during service.
 4. Affidavit or certified statement of the physician or midwife in attendance at birth
 5. Copy from Bible or other family records, certified by a notary public. Copy the facts as found including the condition of the entries, the record itself, and the year in which the book of record was printed.
 6. Affidavits or certified statements of two or more persons, preferably disinterested, who state the age, name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents, naming them and stating their source of knowledge.
 7. Other evidence, such as census records, baptismal or hospital records, insurance policies, school, employment and immigration or naturalization records.

Naturalization records may not be duplicated; therefore, the facts may be copied and authenticated with VA Form 4505.

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- c. To secure birth certificates of children born on military bases located in foreign countries, write the Passport Office, Department of State, Washington, D. C. 20524

12. PROOF OF DEATH

- a. Preferred evidence to prove death: (38 CFR 3.211)

1. A copy of the public record, or when not readily available, a certified copy of the coroner's report of death which properly identifies the person.
2. When death occurs in a medical facility of the United States Government, a certificate signed by a medical officer is acceptable.
3. The official report of death of a member of the Uniformed Services from the Secretary concerned needs no further verification.
4. When death occurs abroad, acceptable evidence may be obtained by:
 - a. A United States Consular report of death bearing the signature and seal of the United State Consul.
 - b. A copy of the public record of death authenticated by a United States Consul or other agency of the State Department.
(M-21-1, part III, par. 6.07(f))
 - c. An official report of death from the head of the department concerned, when the deceased person at time of death was a civilian employee of that department.

- c. If the above-described evidence cannot be submitted, the reason must be stated and the fact of death may be established by affidavits of persons who have personal knowledge of the fact of death, have viewed the body of the deceased, know it to be the body of the person whose death is being established, giving all the facts and circumstances concerning the death, place, date, time and cause. When it is indicated that the veteran died under circumstances which preclude recovery or identification, the fact of death must be established by the best evidence, which from the nature of the case, must be supposed to exist. In the absence of evidence to the contrary, a finding of death made by another federal agency will be accepted by VA. (38 CFR 3.211)

13. SEVEN-YEAR ABSENCE

No state law providing for presumption of death shall be applicable to claims for benefits under laws administered by VA. If evidence is submitted, establishing the continued and unexplained absence of any individual from home and family for a seven-year period shall be considered sufficiently proved. Except in a suit brought pursuant to section 784, Government insurance, the finding of death by VA shall be final and conclusive. See VA Form 21-1775, Statement of Disappearance.

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Title 38 USC Section 5701

§ 5701. Confidential Nature of Claims

- (a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Secretary and the names and addresses of present or former members of the Armed Forces, and their dependents, in the possession of the Department shall be confidential and privileged, and no disclosure thereof shall be made except as provided in this section.
- (b) The Secretary shall make disclosure of such files, records, reports, and other papers and documents as are described in subsection (a) of this section as follows:
- (1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Secretary, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 5109 or 7109 of this title.
 - (2) When required by process of a United States court to be produced in any active or pending suit.
 - (3) When required by any department or other agency of the United States Government.
 - (4) In all proceedings in the nature of an inquest into the mental competency of a claimant.
 - (5) In any suit or other judicial proceeding when in the judgment of the Secretary such disclosure is deemed necessary and proper.
 - (6) In connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Secretary when in the judgment of the Secretary such disclosure is deemed necessary and proper.

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(c)

(1) The amount of any payment made by the Secretary to any person receiving benefits under a program administered by the Secretary shall be made known to any person who applies for such information.

(2) Any appraisal report or certificate of reasonable value submitted to or prepared by the Secretary in connection with any loan guaranteed, insured, or made under Chapter 37 of this title shall be made available to any person who applies for such report or certificate.

(3) Subject to the approval of the President, the Secretary may publish at any time and in any manner any or all information of record pertaining to any claim filed with the Secretary if the Secretary determines that the public interest warrants or requires such publication.

(d) The Secretary as a matter of discretion may authorize an inspection of department records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Secretary may release information, statistics, or reports to individuals or organizations when in the Secretary's judgment such release would serve a useful purpose.

(f) The Secretary may, pursuant to regulations the Secretary shall prescribe, release the name or address, or both, of any present or former member of the Armed Forces, or a dependent of a present or former member of the Armed Forces

(1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or

(2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such name or address be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of any subsequent offense.

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Title 38 USC Section 7332
S 7332. Confidentiality of certain medical records

- (a)
- (1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the Human Immunodeficiency Virus (HIV), or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential, and (section 5701 of this title to the contrary notwithstanding) such records may be disclosed only for the purpose and under the circumstances expressly authorized under subsection (b).
 - (2) Paragraph (1) prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a special written consent is required in order for such records to be disclosed.
- (b)
- (1) The content of any record referred to in subsection (a) may be disclosed by the Secretary in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the Secretary.
 - (2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed by the Secretary as follows:
 - (A) To medical personnel to the extent necessary to meet a bona fide medical emergency.
 - (B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.
 - (C)
 - (1) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the Human Immunodeficiency Virus (HIV), to a Federal, State, or local public-health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

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(2) A person to whom a record is disclosed under this paragraph may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) is deceased, the content of any such record may be disclosed by the Secretary only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the Secretary determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed pursuant to section 7334 of this title.

(c) Except as authorized by a court order granted under subsection (b)(2)(D), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

(d) The prohibitions of this section shall continue to apply to records concerning any person who has been a patient or subject, irrespective of whether or when such person ceases to be a patient.

(e) The prohibitions of this section shall not prevent any interchange of records—within and among those components of the Department furnishing health care to veterans, or determining eligibility for benefits under this title; or between such components furnishing health care to veterans and the Armed Forces.

(f)

(1) Notwithstanding subsection (a) but subject to paragraph (2), a physician or a professional counselor may disclose information or records indicating that a patient or subject is infected with the Human Immunodeficiency Virus (HIV) if the disclosure is made to (A) the spouse of the patient or subject, or (B) to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject.

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(2)

(A) A disclosure under paragraph (1) may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(B) A disclosure under such paragraph may be made by a physician or counselor other than the physician or counselor referred to in subparagraph (A) if such physician or counselor is unavailable by reason of absence or termination of employment to make the disclosure.

(g) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined, in the case of a first offense, up to the maximum amount provided under section 7301(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 7301(f) of this title for a subsequent offense under that section.

38 CFR Section 1.525

Inspection of Records by or Disclosure of Information to Recognized Representative of Organizations and Recognized Attorneys

(a)

(1) The accredited representatives of recognized organizations (§ 14.627 of this chapter) holding appropriate power of attorney and recognized attorneys (§ 14.629(b) of this chapter) with the written authorization of the claimant may, subject to the restrictions imposed by paragraph (a)(2) of this section, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him or her to the claimant or, if the claimant is incompetent, to his or her legally constituted fiduciary. Under the same restrictions, it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his or her spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Department of Veterans Affairs of the claim of the claimant. The heads of field facilities and the directors of the services concerned in Central Office will each designate a responsible officer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term *claimant* as used in this paragraph includes:

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- (2) In the case of a living veteran, a representative acting under a power of attorney from any person not acting on behalf of the veteran will not be permitted to review the records of the veteran or be furnished any information there from to which the person is not entitled, i.e., information not relating to such person alone. Powers of attorney submitted by the other person will be considered "limited" and will be so noted when associated with the veterans records. The provisions of this subparagraph are also applicable to recognized attorneys and the requisite declarations filed by them.
- (3) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Department of Veterans Affairs the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be prepared and attached to the case, outlining the reasons which justify the verbal or written release of the information to the Accredited Representative.
- (4) In any case where there is an unrevoked power of attorney or declaration of representation, no persons or organizations other than the one named in such document shall be afforded information from the file except under the conditions set forth in § 14.629(b)(2) of this chapter. When any claimant has filed notice with the Department of Veterans Affairs that he/she does not want his/her file inspected, such file will not be made available for inspection.

(b)

- (1) Inspection of folders by accredited representatives or recognized attorneys holding a written authorization where such cases are being processed shall be in space assigned for such inspection. Otherwise, station heads may permit inspection of folders at the desks of the accredited representatives in the office(s) which they regularly occupy.
- (2) An insured or after maturity of the insurance by death of the insured, the beneficiary may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Department of Veterans Affairs, a specific authorization in writing for this purpose.
- (3) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative, recognized attorney or accredited representative shall not release information as to the designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§ 1.500 through 1.526.
- (4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives or recognized attorneys holding a written authorization only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Department of

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Veterans Affairs personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Department of Veterans Affairs' personnel for adjudication purposes will not be inspected by anyone other than those employees of the Department of Veterans Affairs whose duties require same for the purpose of clinical diagnosis or medical treatment.

- (5) Under no circumstances shall any paper be removed from a file, except by a Department of Veterans Affairs employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.
 - (6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Regional Counsel, except that in insurance suits under 38 U.S.C. 1975, 1984, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.
- (c) Facility heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information there from will be brought to the immediate attention of the Secretary.
- (d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration or the accredited representative of a recognized organization holding power of attorney, shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.
- (e) When, in developing a claim, the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he or she may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.

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Study Questions: General Provisions, Definitions & Periods of War

Using the assigned references and reading materials, answer the following questions:

1. A person who served only in a Reserve component of the Armed Forces is considered to be as much a veteran as a person whose service was on active duty.
 - a. True
 - b. False
2. If a veteran was on active duty on December 31, 1946, what is considered to be the ending date of World War II service?
 - a. March 31, 1947
 - b. July 26, 1947
 - c. October 12, 1947
 - d. November 11, 1947
3. To be considered a veteran, a person's separation from active service must have been:
 - a. Honorable
 - b. General
 - c. Uncharacterized (entry level)
 - d. Any of the above
4. Medical care is considered a "VA benefit."
 - a. True
 - b. False
5. A person on active duty while on authorized leave is under the influence of alcohol and injured in a traffic accident, those injuries are considered to be the result of that person's own willful misconduct even if the person was not at fault in causing the accident.
 - a. True
 - b. False
6. A member of the National Guard who is injured during the mandatory initial period of active duty for training is considered to be a veteran.
 - a. True
 - b. False

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7. A "helpless child" is defined as one who becomes permanently incapable of self-support due to mental or physical disability before the age of:
 - a. 15
 - b. 18
 - c. 21
 - d. 25

8. Veteran was in the Army from August 1, 1960 to July 31, 1964. He did not serve outside the U.S. Does he have wartime (Vietnam) service?
 - a. True YES
 - b. False No

9. Only a veteran's natural parents may be recognized as dependents for VA purposes.
 - a. True
 - b. False

10. A person on active duty is AWOL from his/her post because of being confined in a civilian jail for grand theft. While in jail, the service person develops a severe infection, which results in a permanent residual disability. Was that infection incurred in line of duty?
 - a. True
 - b. False