**Question 1:** What actions will be taken if a Veteran responds they disagree with the actions taken on their behalf after 30 days?

**Response 1:** If the Veteran’s response is timely (within 30 days of the Veteran’s receipt of our notice), then replace VA’s alternative election with the election provided in the Veteran’s response. VA does not have the authority to invoke an “alternative election” against a Veteran’s response to VA first alternative election. If the Veteran continues to insist on an election that is invalid then VA will process accordingly, including but not limited to denial of the claim. If the Veteran continues to insist on an election that VA has determined to be not in the best interest of the Veteran, VA must process the claim in accordance with the Veteran’s requests for benefits.

Although the Veteran only has 30 days to oppose the alternative election, we will only enforce this limitation if benefits have already been paid based on VA’s alternative election. In other words, so long as benefits have not been paid, we will change the election we made to the election requested by the Veteran in his or her response regardless of how much time has passed. However, once a payment is made based on the alternative election, we will enforce the 30 day limitation. However, we should be accommodating towards the Veteran in our enforcement of the limitation. If there is a question as to whether the Veteran’s response was timely received, carefully review timeline and consider any extenuating circumstances. When a reasonable argument can be made that the individual had not received our notice or we received notice or a call “shortly” after the 30 day period, VA should accept the request of the individual. Keep in mind, the 30 day period begins when the individual “receives” our notification. Extra time should be allotted to account for delivery. Always document the TIMS file in a note with a clear explanation or justification with any request received after 30 days from the date of the original notification. Any notice to VA received after a payment has been made based on VA’s alternative election and after 45 days without an acceptable justification will be considered too late. Individual’s responding within one year from any VA decision maintains the right to appeal and may submit a notice of disagreement to appeal our decisions.

**Question 2:** Can we modify the effective date on Transferred benefits?

**Response 2:** VA cannot change an effective date on an election when the election is connected to a transfer. VA may only assist by selecting the benefit to relinquish and notifying the transferor of the benefit we identified to be relinquished. The transferor may then inform VA in writing of a different intent within 30 days of being notified by VA.

**Question 3:** Can we make a retroactive change in the best interest of an individual after a claim has been adjudicated?

**Response 3:** In general, a VCE should not make alternative election after a claim has been adjudicated. However, provided the original claim for Chapter 33 was submitted on or after January 1, 2017, VA may make an alternative election that is “clearly in the best interest of the individual” up until benefits have been paid. Do not apply this provision once education benefits have been paid to an individual that provided a valid election.

**Question 4:** What happens if reversing our “alternative election” results in an overpayment?

**Response 4:** This would only be the case when VA chooses an earlier effective date than the one originally selected by the Veteran. However, the overpayment would result from the Veteran choosing to get no benefits for the term instead of getting benefits for the term under the only program he or she is eligible. This seems unlikely. However, if a Veteran does respond and request such a change, it is very likely that the Veteran simply failed to understand the explanation provided in our letter. Therefore, before processing such a change, please contact the Veteran telephonically and make one last effort to explain the impact of the Veteran’s choice. If the Veteran still chooses this course of action then proceed with processing and releasing the debt. This is not to be considered an administrative error because the VA’s decision to make the original payment was correct at the time.

