Education Service

Public Law 114-315, Section 405(h) Alternative Election by Secretary

Lesson Plan



June 2017

Version 1.0

Lesson Overview

| Topic | Description |
| --- | --- |
| Time Estimate: | 1.5 hours |
| Purpose of the Lesson: | The purpose of this lesson is to introduce new authority to make an alternative elections under Chapter 33. The lesson will define and communicate the limited scope of this authority and provide direction for processing these claims. |
| Prerequisite Training Requirements: | The following prerequisite training is required:  None |
| Target Audience: | This lesson is intended for Veterans Claims Examiners (VCE) and Education Case Managers (ECM) in any of the Regional Processing Offices (RPOs). |
| Lesson References: | The following references support the lesson content:  (Alternative Election by Secretary)   * [PL 114-315, Section 405(h)](https://www.congress.gov/bill/114th-congress/house-bill/6416/text) * [38 USC 3327(h)](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3327)&f=treesort&edition=prelim&num=0&jumpTo=true) * [M22-4, Part III, Chapter 3 – Processing Applications for Benefits](http://vbaw.vba.va.gov/bl/22/ref/m22-4/Part%20III/ch03.htm) (3.09c) |
| Lesson Objectives: | At the conclusion of this lesson, you will be able to:   * + Recall the 5 specific scenarios when an alternative election is authorized   + Distinguish when an alternative election would be authorized and when it would not   + Restate the steps for processing claims involving an alternative election   + Prepare a letter properly given templates for the additional notification requirements |
| What You Need: | Reserve adequate space equipted to project a PowerPoint presentation. Provide copies of handouts in advance of the lesson or provide directions on how to print from saved location with training advertisement, refer to lesson plan and have a subject matter expert (SME) available if primary presenter is not an SME to assist with answering questions. Training should be instructor led with a means to ask questions during the training. It may be delivered virtually however, except for make up sessions, always to live particpants. Individauls that view a recorded live session to make-up the training should be provided a POC who is available for questions while the employee is taking the lesson. |
| Post Training Requirements: | Upon completion of the classroom portion of the lesson, participants are required to complete an online lesson assessment and survey in Talent Management System (TMS).  To demonstrate successful completion of the lesson participants must pass the assessment with a score of at least 80%.  Participants must also complete the online survey to earn credit for completion of the lesson. |

Instructor Notes

The lesson will define and communicate the limited scope for making an alternative election under Chapter 33 and will provide direction for the processing of these claims. There are a large number of scenarios used and opportunities for comprehension checks throughout the lesson.

| PowerPoint Slides | Instructor Activities |
| --- | --- |
| **Public Law 114-315, Section 405 (h) Alternative Election by Secretary** | **DISPLAY** slide **1**  **INTRODUCE** yourself as the instructor and introduce any fellow instructors.  **INTRODUCE** the lesson. |
| **Icebreaker Activity**  Where is the red-bellied woodpecker predominately red?   1. Wings 2. Head 3. Belly 4. Feet | **DISPLAY** slide **2**  **DISCUSS** that what may appear obvious may not always be correct.  Answer: B. Head |
| **Lesson Objectives**  At the conclusion of this lesson, you will be able to:   * Recall the 5 specific scenarios when an alternative election is authorized * Distinguish when an alternative election would be authorized and when it would not * Restate the steps for processing claims involving an alternative election * Prepare a letter properly given templates for the additional notification requirements | **DISPLAY** slide **3**  **REVIEW** the lesson objectives and assure students that examples will be provided within the lesson. |
| **Background**  On December 16, 2016, President Barack Obama signed H.R.6416, the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, becoming Public Law 114-315.  Section 405 of PL 114-315 provides VA the authority to make an alternative election (forfeited benefit and effective date of forfeiture) on behalf of an individual that failed to make an election or submitted an election that was clearly not in their best interest on or after January 1, 2017. | **DISPLAY** slide **4**  **EXPLAIN** the new legislation and authority by reading the slide |
| **Limited Authority**  As a general rule, VA will not exercise this authority to override a valid election.  Applications received for Post-9/11 benefits with a valid election should be processed as requested with very few exceptions.   * Limited to only the five (5) specific scenarios detailed on the next few slides, * This authority eliminates the need to develop for valid benefit forfeiture or * The need to gain prior authorization to alter the effective date of the forfeiture | **DISPLAY** slide **5**  **DISCUSS** how most claims recived should be processed as requested. Occasionally certain claims that until now required additional development may be processed without development. This authority does not apply to all claims, just a selected group of 5 specific scenarios to be covered in detail next. |
| **When an Alternative Election  would be Authorized (Scenarios 1-3)**   * An alternative election will be authorized in the following limited circumstances:  1. Veteran fails to relinquish a benefit but is only eligible for one benefit besides Chapter 33. 2. Veteran provides an invalid election (relinquishes a benefit for which he or she is not eligible) but is only eligible for one benefit besides Chapter 33. 3. Veteran provides a valid election but fails to provide an effective date to relinquish. | **DISPLAY** slide **6**  **DISCUSS** each of the scenarios  **STRESS** that if all the conditions are not exactly as indicated, then an alternative election would not be authorized.  **NOTE:** The term Veteran applies to both Veterans and Servicemembers. |
| **When an Alternative Election  would be Authorized (Scenario 4)**   1. Veteran provides a valid election with a valid effective date. **But…**  * The provided effective date is simply the date the claimant signed the application (basically a default effective date choice). **And…** | **DISPLAY** slide **7**  **DISCUSS** the first part of scenario |
| **When an Alternative Election  would be Authorized (Scenario 4 cont.)**   * 4. Continued... * The Veteran is currently in school but not receiving benefits under any VA educational benefit program * The choice of a default effective date prevents VA from paying benefits for the Veteran’s current term * Consequently, the Veteran is left without benefit coverage under any program for his or her current term * Had the Veteran chosen a retroactive effective date, the Veteran would receive Chapter 33 benefits for the current term | **DISPLAY** slide **8**  **DISCUSS** the additional details for this scenario  **STRESS** that if all the conditions are not exactly as indicated, then an alternative election would not be authorized. |
| **When an Alternative Election  would be Authorized (Scenario 5)**  5. Dependent applies for Chapter 33, Transfer of Entitlement (TOE) benefits,   * The Veterans Information Solution (VIS) indicates a Transfer Request Date (TRD) of January 1, 2017, or later, *and* * The transferor has not provided VA with a valid election, *and* * The transferor is only eligible for one benefit besides Chapter 33 | **DISPLAY** slide **9**  **DISCUSS** the details for this scenario  **STRESS** that if all the conditions are not exactly as indicated, then an alternative election would not be authorized. |
| **When an Alternative Election  would Not be Authorized**  An alternative election would not be authorized for any other scenario that does not fit within these 5 sets of circumstances.  In any other set of circumstances, develop with the appropriate individual for a valid relinquishment, in writing following existing procedures. | **DISPLAY** slide **10**  **DISCUSS** variants to the scenarios we just covered.  **ASK** participants for examples.  **STRESS** that alternate existing conditions such as an application received prior to January 2017, eligibility to multiple benefits, and even just a valid election are claims where an alternative election would not be authorized. They must be processed as requested or developed as necessary. |
| **Comprehension Check**  There are 5 specific scenarios when an alternative election is authorized.  How many of those scenarios can you recall? | **DISPLAY** slide **11**  **ANSWER**: (Review 5 scenarios)   1. Veteran fails to relinquish a benefit but is only eligible for one benefit besides Chapter 33. 2. Veteran provides an invalid election (relinquishes a benefit for which he or she is not eligible) but is only eligible for one benefit besides Chapter 33. 3. Veteran provides a valid election but fails to provide an effective date to relinquish. 4. Veteran provides a valid election with a valid effective date. **But…**   The provided effective date is simply the date the claimant signed the application (basically a default effective date choice). **And…**   * + The Veteran is currently in school but not receiving benefits under any VA educational benefit program   + The choice of a default effective date prevents VA from paying benefits for the Veteran’s current term   + Consequently, the Veteran is left without benefit coverage under any program for his or her current term   + Had the Veteran chosen a retroactive effective date, the Veteran would receive Chapter 33 benefits for the current term   5. Dependent applies for Chapter 33, Transfer of Entitlement (TOE) benefits,   1. The Veterans Information Solution (VIS) indicates a Transfer Request Date (TRD) of January 1, 2017, or later, *and* 2. The transferor has not provided VA with a valid election, *and* 3. The transferor is only eligible for one benefit besides Chapter 33 |
| **Processing Steps** | **DISPLAY** slide **12**  **INTRODUCE** transition to Processing Steps |
| **Step 1**  **Review** **the claim** thoroughly for eligibility under the Post-9/11 GI Bill as normal. **Determine processing required:**   * If not eligible, disallow the claim. * If eligible **and** the election fits into one of the 5 categories, adjust the election appropriately. * Otherwise, continue to follow existing procedures for development for an election when still necessary or process as normal when no development is required | **DISPLAY** slide **13**  **REVIEW** step 1; “review the claim” and determine processing required”  **NOTE:** Only the second bullet would continue with these steps. Existing procedures would apply to any other situation. |
| **Step 2**  **Update the Long Term Solution (LTS) and Benefits Delivery Network (BDN) appropriately**:  Do not develop for a missing election or to correct a flawed [relinquishment] election when any of the 5 conditions identified are found. Instead, make an alternative election on behalf of the individual. | **DISPLAY** slide **14**  **REVIEW** step ; “Update the LTS” and “BDN”  (in other words, process as if the election was provided) |
| **Step 3**  **Notify by letter of an alternative election:** If an alternative election is made, edit the LTS generated letter or use PCGL as necessary:  a) Modify the initial system generated Certificate of Eligibility (COE) or Award letter with a clear explanation of what election changes were made and why VA made an alternative election.   * (See Attachment A: “Alternative Election Letter Insert for Veteran”)   b) On TOE claims, send a locally produced letter to the transferor with a clear explanation of what election changes were made and why VA made an alternative election. Do not edit the dependent’s notifications.   * (See Attachment B: “Alternative Election Letter for TOE Transferor”) | **DISPLAY** slide **15**  **REVIEW** step 3; “Notify by letter of an alternative election”   1. Veteran/Servicemember claim 2. TOE claims   **NOTE:** Insert should be placed after the first paragraph of the COE or Award letter. Ensure all proper letter formatting is checked. (i.e. Font, alignment)  **DISSCUSSION QUESTION perytaining to dependent notifications:** What if a veteran disagrees with our decision and we have to change it? Do we send the dependent a letter then, how do we explain what happened, since we didn't inform the in the first place?  **RESPONSE:** Generally, a change should not affect benefit payments. If there is an impact to benefits paid or available after a dependent has been notified, the beneficiary and sponsor should be notified of the change and the reason for this change. |
| **Step 4**   * **Review and Electronic Notification**: Review The Image Management System (TIMS) and LTS for an email address belonging to the individual.  1. When no email address is found, update TIMS with a Note indicating an email address was not on file. 2. When an email address is available, the authorizer should use the locally prescribed procedure for completing the email, approving and taking end product credit for the claim (see note below).  * **Requirement to Notify by Electronic Means Whenever Possible:** The requirement for electronic responses should be delayed until a practical solution is found in cooperation with the Business Process Development team... | **DISPLAY** slide **16**  **REVIEW** step 4; “Review and Electronic Notification”  **EXPLAIN** that this process is on hold. Notice will go out to the field as soon as a solution has been implemented.  **NOTE:** Normal end product credit and authorization procedures will apply. No additional credit for these claims. |
| **Attachment A Alternative Election Letter Insert for Veteran**   * In accordance with Section 3327(h) of Title 38, we have made an alternative election on your behalf to relinquish (enter benefit) effective (enter effective date) to establish Post-9/11 GI Bill benefits requested. We did this because (enter clear explanation of reason). This election we made on your behalf will be irrevocable after 30 days. If you disagree with our actions, send us written notice within 30 days from the date you receive this letter to the address at the top of this letter or, you may notify VA electronically by fax at: GI Bill website “[Submit a Question](http://benefits.va.gov/gibill/ext_redirect.asp?url=https://gibill.custhelp.com/app/ask/).” | **DISPLAY** slide **17**  **REVIEW and DISCUSS** the Attachment. Including Proper Placement. If possible provide handout of sample letters with the insert added.  **ASK** particpants to provide “clear explanation of reason” examples.  **STRESS** using direct short clearly worded statements. Don’t over explain. |
| **Attachment B Alternative Election Letter for TOE Transferor**  Dear **(*insert name of transferor*)**  This letter is to notify you that in accordance with Section 3327(h) of Title 38, Section 405, we have made an alternative election on your behalf to relinquish **(*enter benefit*)** effective **(*enter effective date*)**,the date you requested to Transfer Post-9/11 GI Bill benefits to dependents with your service department. We did this because **(enter clear explanation of reason)**.This election we made on your behalf will be irrevocable after 30 days. If you disagree with our actions, send us written notice within 30 days from the date you receive this letter to the address at the top of this letter or, you may notify VA electronically by fax at: GI Bill website “[Submit a Question](http://benefits.va.gov/gibill/ext_redirect.asp?url=https://gibill.custhelp.com/app/ask/).”  **If You Have Questions or Need Assistance**  If you have questions or need assistance, contact us. See the "If You Need Help" enclosure for contact information.    Sincerely,  Education Officer | **DISPLAY** slide **18**  **REVIEW and DISCUSS** the Attachment. If possible provide handout of sample PCGL letters. Point out proper formatting.  **ASK** particpants to provide “clear explanation of reason” examples.  **STRESS** using direct short clearly worded statements. Don’t over explain. |
| **Example Claims** | **DISPLAY** slide **19**  **INTRODUCE** transition  **NOTE to Instructor: General understanding question on terminology:** Can we change the question on the examples to state "Can we make an alternative ELECTION or RELINQUISHMENT?" Depending on the example, we shouldn't just phrase it as "election." VCEs think of the word "election" as DATE only, not benefit.  **Response to Instructor:** These terms are synonymous.  **NOTE to Trainees:** The term alternative election is used throughout applies to the benefit being relinquished and the election date.  **Reference:** The action and authority under 38 USC 3327(h) is making an alternative election. Both the benefit relinquished “in lieu of” and the effective date are parts of the election. 21.9520 (c) (2) An individual may make an irrevocable election… submitting a written statement that includes the following:  (i) Identification information (including name, social security number, and address);  (ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (e.g., “I elect to receive benefits under the Post-9/11-GI Bill in lieu of benefits under the Montgomery GI Bill–Active Duty (chapter 30) program.”);  (iii) The date the individual wants the election to be effective (e.g., “I want this election to take effect on August 1, 2009.”). An election request for an effect ive date prior to August 1, 2009, will automatically be effective August 1, 2009; and  (iv) An acknowledgement that the election is irrevocable (e.g., “I understand that my election is irrevocable and may not be changed.”). (Authority: 38 U.S.C. 3311; Pub. L. 110-252, Stat. 2375-2376) |
| **Scenario 1a Example**  **VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 - Not Eligible for Other Listed Benefits**  Original Chapter 33 claim, VIS and other VA systems indicate:   * Eligible for Chapter 30 and Chapter 33 only   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **20**  **REVIEW** the scenario.  **ANSWER:** We can make an alternative election. Claimant did not make an election (failed to relinquish) and is only eligible for one benefit other than Chapter 33. |
| **Scenario 1b Example**  **VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 - Not Eligible for Other Listed Benefits**  Original Chapter 33 claim, VIS and other VA systems indicate:   * Eligible for Chapter 1606, 30 and 33   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **21**  **REVIEW** the scenario.  **ANSWER:** We cannot make an alternative election. Claimant did not make an election but is eligible for **more than** one benefit other than Chapter 33. |
| **Scenario 2a Example**  **VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 in Lieu of Chapter 1607 - Effective 2017-04-23**  Original Chapter 33 claim, VIS and other VA systems indicate:   * Eligible for Chapter 30 and Chapter 33 only   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **22**  **REVIEW** the scenario.  **ANSWER:** We can make an alternative election. Claimant provides an invalid election (relinquishes a benefit for which he or she is not eligible) but is only eligible for one benefit besides Chapter 33. |
| **Scenario 2b Example**  **VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 in Lieu of Chapter 1607 - Effective 2017-04-23**  Original Chapter 33 claim, VIS and other VA systems indicate:   * Eligible for Chapter 1606, 1607 and Chapter 33   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **23**  **REVIEW** the scenario.  **ANSWER:** We cannot make an alternative election. Claimant made a valid election – Is eligible for Chapter 1607 (election) so claim should be processed as requested. |
| **Scenario 3a Example**    Original claim, VIS and other VA systems indicate:   * Eligible for Chapter 30 and Chapter 33 only   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **24**  **REVIEW** the scenario.  .  **ANSWER:** We can make an alternative election. Claimant provided a valid election but fails to provide an effective date to relinquish. |
| **Scenario 3b Example**    Original claim, VIS and other VA systems indicate:   * Eligible for Chapter 1606, 30 and 33   Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **25**  **REVIEW** the scenario.  **ANSWER:** We can make an alternative election. Although the claimant is eligible for more than one benefit, the claimant made a valid election and only failed to provide an effective date.  **NOTE:** 3a & 3b allow for an alternative election because a valid benefit was being relinquished in both examples. |
| **Scenario 4a Example**  VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 in Lieu of Chapter 30 - Effective 2017-04-26  Original claim, VIS and other VA systems indicate:   * Eligible for Chapter 30 and Chapter 33 only   Additional information reviewed on the application below:  Section of VA Form 22-1990 - Indicating Date You Started or Will Start Training: 2017-01-20  Section of VA Form 22-1990 - Electronically Received by VA: 2017-04-26  Question: Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **26**  **REVIEW** the scenario.  **ANSWER:** We can make an alternative election. Claimant would not be paid for trainging that began prior to the election date sumitted. It would be in the best interest of the claimant to pay benefits beginning in January. |
| **Scenario 4b Example**  **VA Form 22-1990 - Application for VA Education Benefits, applied for Chapter 33 in Lieu of Chapter 30 - Effective 2017-04-26**  Original Chapter 33 claim, VIS and other VA systems indicate:   * Using Chapter 30 and eligible for Chapter 33   Additional information reviewed on the application below:  Section of VA Form 22-1990 - Indicating Date You Started or Will Start Training: 2017-01-20  Section of VA Form 22-1990 - Electronically Received by VA: 2017-04-26  **Question:** Can we make an alternative election with this claim? Why or why not? | **DISPLAY** slide **27**  **REVIEW** the scenario.  **ANSWER:** We cannot make an alternative election. The claimant is eligible and using Chapter 30 for the term beginning January 2017. Since the claimant has benefit coverage, VA should process the claim as submitted. |
| **Scenario 5a Example**  VA Form 22-1990E - Application for TransferedBenefits under Chapter 33  Original TOE claim, VIS and other VA systems indicate:   * Sponsor has not applied for education benefits   + Eligible for Chapter 1606 and Chapter 33 only   + 12 months of chapter 33 transferred to the dependent   + Transfer Request Date (TRD) of February 1, 2017   **Question:** Can we make an alternative election with this claim?  Why or why not? | **DISPLAY** slide **28**  **REVIEW** the scenario.  **ANSWER:** We can make an alternative election. The transferor was only eligible for one other benefit besides Chapter 33 on the TRD date which was on or after January 1,2017. |
| **Scenario 5b Example**  VA Form 22-1990E - Application for TransferedBenefits under Chapter 33  Original TOE claim, VIS and other VA systems indicate:   * Sponsor has not applied for education benefits   + Eligible for Chapter 1606, 30 and 33   + 12 months of chapter 33 transferred to the dependent   + Transfer Request Date (TRD) of February 1, 2016   **Question:** Can we make an alternative election with this claim?  Why or why not? | **DISPLAY** slide **29**  **REVIEW** the scenario.  We cannot make an alternative election for multiple reasons. The transferor was eligible for **more than** one other benefit besides Chapter 33 on the TRD date but also the transfer was requested prior January 1,2017. |
| **Alternative Elections – FAQs**  Review Alternative Elections: Frequently Asked Questions – FAQs handout. | **DISPLAY slide 30**  **READ and DISCUSS** each question and Response.  **Question #1 Follow-up:** Who gets to make the determination as to whether it was received timely?  **Response #2 follow-up:** Guidance is provided in Queation & Response #1 of the Alternative Election FAQs. Ultimately, decisions are in the hands of individuals processing claims.  **Question #1 Follow-up:** How many telephonic attempts should be made? How long will we hold before making the final decision? If the veteran is contacted and provides an alternative decision that still isn't in the best interest, do we accept that? Does it have to be in writing? What if the veteran is contacted and decides to go with VA decision, do we put a 119 in the file and that's all, issue another COE?  **Response #1 follow-up:** Whenever a claimant is called a 119 should be added to the file to document the call. Failed development attempts byphone (each) should be documented permenantly in the file using notes. A VCE shall use all available means to contact the claimant directly before creating the debt. The purpose of the call in this context is to confirm another election because we (VA) feels is not in the best interest of the claimant to create an overpayment. If the claimant insits or withdraws his/her request to reverse the alternative election, these are not new elections and the 119 is sufficient documentation. Regardless if additional processing is required or not, a letter must be sent to the claimant explaining that we reversed or did not reverse citing our reasons to include based upon the notice provided by the claimant and any conversations with the claimant, include dates. |
| **References**  **Alternative Election by Secretary:**  [**PL 114-315, Section 405(h)**](https://www.congress.gov/bill/114th-congress/house-bill/6416/text)  [**38 USC 3327(h)**](http://uscode.house.gov/view.xhtml?req=(title:38%20section:3327%20edition:prelim)%20OR%20(granuleid:USC-prelim-title38-section3327)&f=treesort&edition=prelim&num=0&jumpTo=true)  [**M22-4, Part III, Chapter 3 – Processing Applications for Benefits**](http://vbaw.vba.va.gov/bl/22/ref/m22-4/Part%20III/ch03.htm) **(3.09c)** | **DISPLAY slide 31**  **INFORM** participants of lesson references. |
| **Summary**   * Today you: * Recalled the 5 specific scenarios when an alternative election is authorized * Distinguished when an alternative election would be authorized and when it would not * Restated the steps for processing claims involving an alternative election * Have been given templates for the additional notification requirements for preparing notifications properly | **DISPLAY slide 32**  **REVIEW the Summary of the lesson.** |
| **Questions?** | **DISPLAY slide 33**  **ASK for questions on the topics discussed in this training and entertain responses. (If trainees are reluctant, propose questions yourself to begin the dialog.)**  **CLARIFY responses as needed and paraphrase question clearly for all to hear before providing a “correct” responses.**  **NOTE: Limit questions to scope of topic. Do not guess. Unless information is covered in the training, make note of question and provide a follow-up response to all trainees as soon as possible.** |
| **TMS Assessment and Survey**   * The assessment and survey have been assigned to you in TMS * The questions are multiple choice or true and false, and are based on the information you learned today * You should be able to complete the assessment and survey within one half hour * Be sure to complete both the assessment and the survey in TMS to receive credit for this training | **DISPLAY slide 34**  **CONFIRM** that thestudents know how to access the assessment and survey in TMS.  **EXPLAIN** that the assessment is TMS# and will cover what they learned in class today.  **REMIND** them that they must complete both the assessment and the survey in order to receive credit in TMS for their training.  **TELL** students that the survey provides them an opportunity to improve the training and that their feedback is welcome. |