Part 3: Chapter 3 - Processing Applications for Benefits

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3.01 GENERAL

This chapter describes the application forms claimants must use to apply for the education benefits covered in this manual. It also provides procedures and reference material for certain issues that arise in application processing. To review procedures that are unique to a specific benefit, see that part of the manual.

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SUBCHAPTER I. BASIC CONCEPTS

3.02 OVERVIEW

Veteran Claims Examiners (VCEs) must observe certain basic rules which apply to claims and informal claims and the time limits for receipt of evidence. These rules are the same for all education benefits. An individual must file a claim for educational assistance with VA. The claim must be in the form prescribed by the Secretary. That list is provided in section 3.07 of this chapter.

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3.03 DEFINITIONS

VCEs will use these definitions when processing education claims.

a. Formal Claim. A claim is considered to be formal when the claimant (or his or her authorized representative) files the claim with VA, and--

(1) it is on the proper form prescribed by the Secretary and

(2) is a request for education assistance or an increase in educational assistance or an extension of the eligibility period for receiving educational assistance.

A "proper form" includes VA Form 22-1990 (paper or electronic) or VA Form 22-5490 (paper or electronic) for original applications.

b. Informal Claim. A VCE should consider an informal claim as any written communication from an individual (or an authorized representative) if it indicates intent to apply for educational assistance. Upon receipt of an informal claim, VA will provide an application form to the claimant. If VA receives the application form within one year, VA will consider the claim to have been filed on the date VA received the informal claim.

(1) When VA requests evidence in connection with a claim and the claimant submits the evidence to VA after having abandoned the claim (see definition below), the claimant's submission of the evidence is an informal claim.

(2) The act of enrolling in an approved school is not an informal claim.

(3) VA will not consider a communication received from a service organization, an attorney, or an agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

NOTE: An unsigned application is NOT an informal claim. VCEs should refer to paragraph 3.09 for policies regarding these applications. VCEs should not confuse a "substantially complete" claim with an informal claim. A claim could be substantially complete, even without a signature. Remember, a signature is not a determining factor for a claim to be considered complete or substantially complete. If an application is not signed, but it is otherwise a complete or substantially complete claim, do not wait for a signature to take action on the claim.

c. Abandoned Claim. A claim is abandoned if:

(1) The claimant furnishes additional evidence in connection with a formal claim and the claimant

(a) Does not furnish the evidence within one year of the date of the request; **and**

(b) Does not show good cause why the evidence could not have been submitted within one year of the date of the request;

OR

(2) VA requests the claimant file a formal claim after receiving an informal claim and

(a) VA does not receive the formal claim within one year of the date of request; **and**

(b) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

NOTE: The concept of an abandoned claim does not apply to service information or kickers received at a later time.

d. Date of Claim. The date of claim is the date on which a valid claim or application for educational assistance is filed with VA.

(1) The date of claim is the date VA received an informal claim if the informal claim had been filed and VA received a formal claim within one year of the date that VA requested it (or within such other time limit set by 38 CFR 21.1032).

(2) If a claim is abandoned, the date of claim is the date a new formal claim is received or the date of an informal claim which meets the requirements of subparagraph (1) above.

EXAMPLE: An informal claim is received on 01/03/15 (in this situation the claim was for benefits written on a napkin). The electronic form 22-V1990 was not received until 12/27/15 the date of claim would be December 27, 2015. However, for payment purposes, the date of the informal claim protects how far back VA can pay benefits to this claimant.

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3.04 VA RESPONSIBILITIES

VA has certain responsibilities when an individual files a claim for education benefits (38 CFR 21.1031).

a. Furnishing Forms. VA will send any necessary claim forms to an individual when he or she files an informal claim for education benefits. VA will also furnish appropriate instructions and, if appropriate, a description of any supporting evidence required to complete the informal claim.

b. Requesting Additional Evidence. If the formal claim is incomplete or if VA requires additional evidence or information to make a determination on the claim, VA will notify the claimant of the evidence or information that VA needs to make such determination. This notification will include the one year time limit provision.

NOTE: In compliance with Duty To Assist, VCEs will review and request additional evidence within 5 working days the document (claim token) has been assigned to them. Diligence is required to ensure documents are reviewed in a timely manner.

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3.05 TIME LIMITS

a. If a claimant's application is incomplete, the VCE will notify the claimant of the evidence necessary to complete the claim. Payment of education assistance will not be allowed if the evidence is not received within one year from the date of such notification.

b. Computation of Time Limit

(1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, exclude the first day of the specified period, and include the last day (38 CFR 21.1032(f)). This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, include the next succeeding workday in the computation.

(2) The first day of the specified period referred to in subparagraph (1) will be the date of the letter of notification to the claimant or beneficiary which establishes a time limit.

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3.06 GOOD CAUSE CONSIDERATION

When a claimant has been unable to provide additional evidence to complete his/her claim within the one year time frame, VA should consider the existence of good cause if the claimant provides the needed information after the one year.

a. Definition of "Good Cause". Examples of good cause include, but are not limited to extended illness, death in the immediate family, and documented inability to obtain evidence from a third party. The claimant must explain how the circumstances prevented him or her from acting within the time limit. The VCE should exercise care that inability to act for an entire year is demonstrated.

EXAMPLE: A claimant applies for Chapter 33 on August 1, 2013, with an enrollment certification beginning August 1, 2013. However, the claimant fails to submit a relinquishment for a non-Chapter 33 benefit. VA sends notice to the claimant requesting relinquishment of a non-Chapter 33 benefit and suspends the claim for 30 days. The claimant does not supply a relinquishment within the 30 days, but has a good-cause for extension which is granted for up to 1 year. The claimant then sends in relinquishment 14 months later on October 1, 2014. VA may pay back 1 year from the date of relinquishment, as far back as October 1, 2013, because the 12 month good -cause extension expired on August 1, 2014.

b. Evidence Received Without Claim for Good Cause Extension. If the claimant submits the evidence after the one year time limit but does not specifically request an extension of the one year time limit for good cause, apply the following procedures:

EXAMPLE: Veteran is currently enrolled and entitled to additional dependency allowance. The VCE should adjust the award to include the dependents from the date that the evidence was received. If no current action can be taken on the evidence, VCE should place a FLASH in the claimant's TIMS folder to alert the next VCE there is additional evidence for future award actions. VCE should notify the claimant of the action taken.

Insert the following paragraph into the development letter:

The evidence we requested on (date) was not received within one year. We can consider this evidence as show good cause for why you could not respond in a timely manner. Basically, you should state why you the one year time limitation set by law. You should state specifically what happened and when it happene extension and information concerning why you could not send the evidence within the one-year time limit time limit by which the evidence should have been received. You should provide your request for an exter next 30 days. It must be received within one year from the date of this letter to be considered for extensio

VCEs should place the claim token in AWAIT Mail for 30 days and extend the supplemental end product for 30 days.

If the evidence is received within 30 days, and the VCE can accept the reason the claimant says he could not respond within the original time frame, correct the award and send appropriate award letter.

If the VCE cannot accept the reason, VCE should PCLR the end product and send denial letter specifying why the good cause reason was not accepted.

If the evidence is not received within 30 days, the VCE should PCLR the end product and send a denial letter explaining the information requested was not received within 30 days and therefore the prior award action is complete. Attach a 4107 to this denial letter. Claimants can appeal the denial of a time limit extension independently from other issues.

c. Good Cause Extension Claims. VCEs should accept a claim for a good cause extension if the following elements are met:

(1) The requested evidence is received before or at the same time as the request for extension.

(2) The original time limit has expired. If a claimant requests an extension of time based on good cause before the original time limit has expired, advise the claimant that the claim for extension will be considered after the evidence is submitted.

NOTE: The good cause explanation must always cover the entire period up to the date the requested evidence is received.

d. Good Cause Statement and Evidence. The VCE should accept a claimant's statement as to the facts alleged concerning the good cause without additional development unless there is contradictory evidence of record. A claimant does not have to submit evidence substantiating the statement.

e. Administrative Decision. If good cause has been claimed, VCEs should prepare an administrative decision on all claims which qualify for good cause extensions. (Refer to Part 3, Chapter 2). The discussion section of the decision must address whether good cause has been shown and whether the length of the extension requested is reasonable. This administrative decision is necessary whether the good cause is granted or not.

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SUBCHAPTER II. GENERAL PROCEDURES

3.07 APPLICATION FORMS

NOTE: Photocopies of original claims are acceptable. This is especially important in certain situations such as when a claimant is overseas.

To make a formal claim for benefits, an individual must use the correct application form.

Application Form	Benefit	Beneficiary
VA Form 22-1990, 22-1990e, 22-1990n or VONAPP 1990	Chapters 30, 32, 33, 1606, National Call to Service and Section 903.	Any Veteran or Service Member, or Section 903 dependents wishing to apply for Education benefits
VA Form 22-1990t	Chapters 30, 32, 33, 1606, and Section 903	Claimants that want to receive tutorial assistance
VA Form 22-1995 and VONAPP-1995	Chapters 30, 32, 33, 1606, and Section 903	Used by beneficiaries to request a change or program or training (Refer to Chapter 4 for additional information)

VA Form 22-5490 or VONAPP 5490	Chapter 35 or Ch33 Fry Scholarship	This form is used by spouses and children to apply for benefits under Chapter 35 or Chapter 33 for the Master Gunnery Sergeant Fry Scholarship under Post 9/11 GI Bill.
VA Form 22-5495 or VONAPP 5495	Chapter 35 or Ch33 Fry Scholarship	Used by beneficiaries to request a change or program or training (Refer to Chapter 4 for additional information).
VA Form 22-8889	Section 901	Veterans, Service members, and dependents who wish to apply for Section 901 under PL 96-342
VA Form 22-0848	Chapter 33	Application for Rural Relocation Benefit under the Post 9/11 GI Bill
VA-Form 22-5281	Chapter 32	Participants who are requesting a refund of their Chapter 32 contributions.

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3.08 INITIAL ACTIONS IN CLAIM PROCESSING

a. Duty to Assist. VCEs must extend all reasonable assistance to claimants in meeting the evidentiary requirements necessary to establish their claims under the applicable laws and regulations. VCEs must give claimants every opportunity to establish entitlement to the benefits sought, to include complete procedural and appellate rights. VCEs must use plain language in any communication with Veterans. VCEs should ensure they thoroughly develop for information from *all sources* before making decisions affecting entitlement.

b. Date-of-Receipt Stamp. All paper mail should be date stamped on receipt in the RO mailroom.

(1) Do not affix stamps directly on original documents which are to be returned such as discharge certificates, court records and papers, marriage, birth and death certificates, divorce decrees and similar records. Make a copy of the document, date stamp the copy and prepare the original document for return to the sender.

(2) Do not routinely require the use of a date stamp in the Education Division, but, if an unstamped document is received in Education, the approved designated official should stamp it as soon as possible. This protects the date of claim for the claimant.

(3) The Education Officer or designee, not below the grade of section chief, may require the use of the receipt stamp to document unusual delays in the receipt of documents in the division.

c. Initial Screening. Review all applications, claims, correspondence and evidence immediately to determine if the claim is truly an Education related document. If not an Education document, follow local RPO procedures to ensure the document is delivered to the appropriate division or agency.

d. Signature of Claimant. With the exception of a child not of legal age applying for Dependent's Education Assistance, Chapter 35 benefits, a signature is not required when applying for Education benefits. When using VONAPP 1990, the submission electronically suffices for the signature. When a paper application is received, as stated below, a signature will be required but it will not prohibit the determining of eligibility.

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3.09 PROCEDURES TO REVIEW VA FORM 22-1990

NOTE: The following procedures are for use with **Paper** VA Form 22-1990. As previously stated, when VONAPP 1990 is submitted electronically, the submission itself suffices for the signature.

a. Unsigned Application Procedures:

(1) Unsigned application - claimant is eligible. The VCE should issue a Certification of Eligibility (COE) (use PCGL AWD-1) with appellate rights. In addition to other appropriate actions, the VCE should advise the claimant that VA can't award benefits until his or her signature is received. VCE should flash the claimant's TIMS folder that a signature is necessary before an award can be processed. VCEs should take the end product and finish the token. When additional documents reactivate the token, do the following:

A. If the signature is submitted prior to the receipt of a VA Form 22-1999, delete the Flash. No further action needs to be taken until VA Form 22-1999 is received. PCAN the end product and finish the token.

B. If a VA Form 22-1999 is received prior to receipt of the claimant's signature, but *within* 30 days of the date of the COE, control the claim until the signature is received, then process the claim. If the signature is not received within 30 days from the date of the COE, deny the claim and attach appellate rights. In the denial letter, be sure to include another request for the claimant's signature with the denial. Take the end product and finish the token.

C. If a VA Form 22-1999 is received prior to receipt of the claimant's signature but more than 30 days after the date of the COE, deny the claim and attach appellate rights. In the denial letter, be sure to include another request for the claimant's signature with the denial. Take the end product and finish the token.

D. If more VA Form 22-1999s are received after a claim has been denied (as above) and no signature has been received, no further action should be taken. PCAN the end product and finish the token.

(2) Unsigned application - development is needed to determine eligibility. VCEs must attempt to obtain the information through initial development (from DoD, the school, DFAS, etc.). Control the claim for receipt of the requested information or documentation.

A. If the initial development for necessary information required to make the eligibility determination isn't successful, apply Duty to Assist procedures, as appropriate. (Refer to subchapter 6 for additional information).

B. When developing for the information needed to make an eligibility determination, include a request for the claimant's signature in the development letter. VCEs should include in the letter a reminder that until his or her signature is received, VA can't award benefits even if the claimant's eligibility is established. This will prevent further delays when a VA Form 22-1999 is received.

C. If the information required to make the eligibility determination is received, but the signature hasn't been received, proceed as stated above.

(3) Unsigned application – claimant not eligible. If the claimant isn't eligible, disallow the claim in BDN/LTS and issue the appropriate letter. (Letter may be computer generated or PCGL). VA Form 4107 will automatically be included. Take the end product and finish the token.

b. Type of Benefit. VCEs must either allow or deny each benefit claimed on an application. In addition, the VCE should consider the possibility of eligibility to benefits not checked if this is to the advantage of the claimant. Claimants may not correctly identify or specify the benefit they are seeking. Remember that LTS/BDN will permit the processing of a denial of one benefit and not alert the VCE to the claimant's potential eligibility to one of the other benefits.

However, if the claimant is only eligible for a benefit found on a different application, the VCE should process the current application as a denial but develop for new application and close claim. VCE cannot process a benefit found on an application that is not currently on file.

EXAMPLE: Student submits VA Form 22-5490 and applies for Chapter 35. VCE denies Chapter 35, but notices that student is eligible for Chapter 33 Transfer of Entitlement (TOE). VCE should edit the Chapter 35 denial letter to explain that possible Chapter 33 TOE eligibility exists and they need to reapply, enclosing a VA Form 22-1990E.

In addition, if the claimant's eligibility ends or has ended under the benefit requested, the VCE should review eligibility under other benefits. If eligible for another benefit, a COE should be issued, or award payment. If the claimant is eligible for multiple benefits, the VCE should develop for appropriate choice and finish the claim token. No control for the election in this situation.

EXAMPLE: A student submits VA Form 22-1990 for Chapter 33 benefits. Student has already used 36 months under Chapter 33 and relinquished Chapter 1606. He has a few months of entitlement remaining under Chapter 30. VCE would deny the claim for Chapter 33 as entitlement exhausted but send COE with information regarding Chapter 30. If VA Form 22-1999 has been received, payment may be authorized under Chapter 30 in this scenario.

c. Elections. Effective for periods of service on or after August 1, 2011, there is a bar to dual eligibility based upon the same period of service, the claimant must make an irrevocable election as to which benefit the service will be credited. A VCE cannot automatically pay the highest benefit when an irrevocable election is required. The claimant must be notified of his/her options using the appropriate letter in order to make an informed election.

However there are specific procedures needed when an irrevocable election is NOT required. It should be noted generally these procedures only apply when a PAPER VA Form 22-1990 is received. Claimants using an electronic version of VA Form 22-1990 must select a benefit. Remember an election is no longer required prior to paying benefits when no specific benefit is requested and the claimant is eligible for multiple benefits based upon **different periods of service**.

(1) No Benefit Checked and Not Eligible for any Benefits

If a claimant does not check a specific benefit on the application form and is not eligible for any benefit, the VCE must deny each benefit to which the Veteran is not entitled. Disallow the claim in BDN /LTS to establish a disallowed master record for each benefit. Suppress all BDN/LTS generated letters and send the claimant the appropriate letter explaining why he or she is not eligible for each benefit denied. The VCE is entitled to an original end product for each disallowed master record.

NOTE: The VCE should only deny those benefits to which the claimant would have had potential eligibility. Typically a disallowance for Chapter 32 would no longer be necessary as the applicant would not have served during the appropriate time period.

(2) No Benefit Checked and Eligible for One Benefit

If a claimant does not check a specific benefit on the application form and is eligible for only one benefit the VCE should award the benefit for which the claimant is eligible but do not formally disallow the other benefits (do not take an End Product Code or create a disallowed BDN master record for those benefits)

(3) No Benefit Checked and Eligible for Multiple Benefits

If a claimant does not check a specific benefit on the application form and is eligible for more than one benefit, and an irrevocable election is not received, the VCE will do the following:

A. An original end product will be Cested for all possible benefits the claimant has potential eligibility (i.e. Chapter 33, Chapter 30, Chapter 32, and Chapter 1606).

B. The VCE should send the claimant a development letter fully informing him/her of eligibility for all potential benefits. The VCE should ensure the following paragraph is in the development letter regarding eligibility if Chapter 33 is one of the possible benefits.

"It appears you are eligible for Chapter 33. In order to establish eligibility for Chapter 33 you the following benefits to which you are eligible: (list the benefits).

If you do not wish to use Chapter 33, please select one of the other benefits for which you a

C. The VCE should control in AWAIT mail in TIMS for 30 days. Be sure to DISP all end products for 30 days from date of development letter. If after 30 days no election is received, VCE should deny the claim as failure to furnish and send the appropriate letter. However, at this time, the VCE is only entitled to one original end product. If it appears the correct benefit would have been Chapter 33, deny in LTS and BDN using the 340 end product. Do not formally disallow the other benefits (do not take an End Product Code or create a disallowed BDN master record for those benefits). If one of the other benefits would have been the appropriate benefit, the VCE can deny failure to furnish on that end product.

4. Claimant Selects Multiple Benefits and is Eligible for More than one Benefit

If a claimant selects one or more benefits and is eligible for one (or more), but a better benefit is available that was not checked, the VCE must award the benefit checked. Fully inform the claimant of all of the benefit(s) to which he/she is entitled using the appropriate PCGL letter.

Remember these procedures only apply to those who have submitted a paper VA Form 22-1990. This is not applicable to dependents that have not used the correct application form. See the paragraph above for assistance.

5. Claimant Selects One Benefit but is not Eligible for that one but is Eligible for two or more others.

If a claimant selects one benefit and is not eligible for it, but is eligible for two or more others, the VCE should deny the benefit for which the claimant applied. The claimant needs to amend the PCGL/LTS letter to advise the claimant there is possible entitlement to other benefits and an election is required. Since there is not a claim for the other benefit, the VCE will not control this letter. When the claimant reopens with the correct application, requesting a benefit to which he is eligible, the proper end product will be CESTed and procedures followed.

Remember VCEs have no legal authority to substitute another benefit for a claimant when that person requests a benefit for which he/she is eligible.

As a reminder, VCEs may only accept written confirmation of an election. Examples of a written confirmation include a letter, entry on an electronic application, or Right-Now-Web. Telephonic elections are never acceptable.

d. Disposition of Claims. If a formal claim is received, either a COE must be issued or an award must be authorized. A disallowance is considered an award.

e. Recording End Products. VCEs are entitled to an end product only after final action is taken on all pending issues on the claim. M22-3, Manpower Control and Utilization Education Activities, lists the end products for education claims processing.

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3.10 SPECIFIC ISSUES REGARDING VERIFICATION OF SERVICE

a. Determining Active Duty. Determining what is or is not "active duty" can be a complex issue. The terms "active duty," "ACDUTRA" (Active Duty for Training), and "Selected Reserve" have very specific meanings previously defined in Part I, Chapter 2. The term "active duty" has its own definition for each benefit. VCEs should refer to the specific part of M22-4 for the definition of "active duty" regarding Chapter 30, Chapter 33, or Chapter 1606. The following paragraphs may clarify the effect of specific types of service.

b. Full-time Duty in the Reserve or National Guard.

In some instances full-time duty in the Reserve or National Guard may be considered active duty under Title 38. For Chapter 30, see Part 5, Chapter 1. National Guard members and Reservists who have served a minimum of 90 days of qualifying service are eligible to received Chapter 33 benefits. For additional information regarding Chapter 33 benefits, refer to Part 12, Sub-chapter 2.01(c).

(1) Duty Status of Reservists. At the beginning of an enlistment in the Reserves, an individual is required to perform Initial Active Duty for Training (IADT) for a period of not less than 4 months. The remainder of the enlistment is spent as a member of the Ready Reserves.

A. Active or Inactive Duty for Training. Title 38 CFR 3.6 describes active and inactive duty for training. If a Reservist's only service is active or inactive duty for training, the Reservist must have died or sustained a disability during the period of training to be considered a Veteran. If the period of training did not result in death or disability, the Reservist is not a Veteran based on that service.

B. Full-time Duty in the Uniformed Services. Since the 1960's the Reserve components have had several programs such as the Active Guard Reserve (AGR) and the Active Duty Support (ADS) Program in which members serve full-time in operational or support positions but are never formally called to active duty. This type of service, whether it lasts one day or 3 years, is classified by the service departments as "active duty for training (ACDUTRA)."

The term "full-time duty in the uniformed services" is not defined in 38 U.S.C or 38 CFR. However, an opinion issued by the General Counsel on November 9, 1988, makes it clear that, despite the military's ACDUTRA classification, VA has the authority to declare certain types of service performed by Reservists to be "active duty" for the purposes of VA benefits. According to this opinion, Reservists meet the definition of active duty if the facts of record establish that the service was full-time and was for operational or support (as opposed to training) purposes.

Certain types of Reservist duty are generally **NOT** "full-time duty in the armed forces." These include the following:

(a) IADT (Except for Chapter 33 depending upon total aggregate service)

(b) Active Duty Training (ADT) **

** In rare situations, ADT is qualifying and is considered FT duty for Chapter 33. Refer to Part 12, Chapter 2, Sub-chapter 2.01 Qualifying Service for additional information.

There are two other categories of Reservist duty which may or may not constitute "full-time duty in the armed forces" depending upon how it is defined for the specific benefit program. These categories are Active Duty for Special Work (ADSW) and Active Duty (AD). They generally imply that the Reservist is performing support duties rather than training. ADSW is used for periods of less than 140 days service and AD for longer periods.

Reservists mobilized under Title 10 under Section 688, 12301(a), 12301(d), 12301 (g), 12302, or 12304 qualify as active duty service for the purpose of Chapter 33 regardless of the narrative reason or the type of duties being performed, although it may be deducted depending upon the total amount of aggregate service.

NOTE: Section 12301(d) of Title 10 was formerly Section 672(d) of Title 10. Some states still use the old categorization of 672(d) on active duty orders. VCEs should recognize Active Duty service under Section 672(d) of Title 10 as qualifying for Chapter 33 benefits if the service was on or after September 11, 2001.

(2) National Guard Service (38 CFR 3.6(c) & (d) and 3.7(m))

a. The Army National Guard and the Air National Guard operate full-time operational and support programs similar to the Ready Reserves. However, Section 101(22) of Title 38, U.S.C, provides separate definitions of "active duty for training" for Guard personnel and Reservists. While the definition for Reservists permits the interpretation that full-time duty **for purposes other than training** is active military, naval or air service, the definition for Guard personnel does **NOT** permit this interpretation. Therefore, full-time operational/support service performed by Guard personnel in ACDUTRA status does **NOT** qualify as active duty for purposes of VA benefits **UNLESS** the member or former member has a service-connected disability or injury that was incurred or aggravated during the ACDUTRA period. Full-time service in the National Guard for the purpose of organizing, administering, recruiting, instructing, or training may be qualifying. In addition, activations in support of a national emergency under Section 502(f) of Title 32 may be qualifying.

A. Service under Title 10 U.S.C. If the Guard unit or the member individually is "activated" under the authority of Title 10 U.S.C., members who report for active duty (service characterized as Federal Active Duty) generally have qualifying service for Title 38 purposes until deactivated. If an individual's orders specify activation to temporary duty under Title 10, further development regarding the purpose of the activation is generally not needed **unless** there is evidence in file showing the purpose of the activation was to train the individual. The order to active duty **MUST** state that service is under Title 10 U.S.C.

B. Service under Title 32 U.S.C. Full-time National Guard service is "active duty for training" under 38 U.S.C. 101(22)(C) if performed under 32 U.S.C. 316, 502, 503, 504 or 505. This is true regardless of whether the member is performing operational duty or is undergoing training. Operational duty includes, for example, AGR and ADS service. National Guard service does not meet the definition of "active military, naval, or

air service" in 38 U.S.C. 101(22) unless the member or former member is service disabled and therefore subject to an exception outlined in 38 U.S.C. 101(24) or 106(b)(3). Determinations as to whether such service is qualifying will depend upon the definitions used for the specific benefit program.

NOTE 1: The terms AGR and ADS apply to Guard personnel as well as to Reservists who have served in these capacities.

NOTE 2: Since 1964 there has been authority under 32 U.S.C. 502(f) to assign National Guard members who provide full-time support to the Reserve components to full-time operational duty even though they are not activated.

c. VA Responsibility. It is VA's responsibility to determine eligibility to VA education benefits. By coordinating with the service departments, VA will make the final decision for claimant's eligibility.

d. Requests for Additional Service Data. In situations when the VCE may be unable to make an eligibility decision based on the information submitted from the claimant, additional development may be required. In those situations, VCEs must request clarification of the service data of record to what the claimant has submitted and to what is available in multiple verification systems including VIS, DPRIS, BDN, etc.

NOTE: Development should occur in DPRIS first and the claim will be suspended in TIMS for 24 hours. **VCEs should use this link:** https://www.dpris.dod.mil/. The initial request to DPRIS should be captured into TIMS. If the actual request cannot be captured, a NOTE should be created with the VCEs name and date of request to DPRIS. When the documentation in DPRIS is received, if the VCE can make the determination, they should process the claim.

If the information received from DPRIS (or if DPRIS cannot provide additional information), the VCE should develop further to all sources simultaneously (both the claimant and service department point of contact) in order to expedite the claim.

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3.11 VERIFICATION OF SERVICE - SERVICEPERSONS AND VETERANS

a. Verification of Service. To verify service, it is important the VCE use the proper source of data. **Generally**, the primary source of data for each benefit is:

- Chapter 33: DD Form 214
- Chapter 33 TOE: VIS
- Chapter 30: 30D Screen
- Chapter 1607: VIS
- Chapter 1606: DoD Screen
- Chapter 32: M26/M27 Screens

b. Additional Sources of Data. In addition to the primary sources of data for each benefit, additional sources may be used to help determine cumulative evidence.

- Certified Copy Member 4 of Veteran's DD Form 214 showing character of discharge
- VIS Screen or
- BDN VID Screen which shows
  - Character of Service is Honorable (HON) or Under Honorable Conditions (UHC),
  - Branch of service code,
  - Separation reason is *Satisfactory (SAT)*,
  - There is a "*Y*" or "D" in the VADS field, or
  - There is a "*Y*" in the VER field.

NOTE: There are Character of Service Codes strictly used in BDN.

BIRLS CHARACTER OF SERVICE CODES

BIRLS ENTRY	DISCHARGE CERTIFICATE (DD214)
HON	Honorable
UHC	General (Under Honorable Conditions; Not acceptable for Chapter 30 or 33)
OTH	Other Than Honorable
	(May also be shown on DD 214 as Unsuitable or Bad Conduct)
DIS	Dishonorable Discharge
UNK	Unknown
HVA	Honorable for VA purposes (not shown on DD 214); entered only after administrative decision made (Will not entitle Veteran to Chapter 30 or Chapter 33)
DVA	Dishonorable for VA purposes (not shown on DD 214); entered only after administrative decision made

The VCE should depend on the primary source of data as the authoritative source in the event of conflicting evidence.

NOTE: In some situations, Veterans' Benefits Management System (VBMS) may provide additional service information for claimant's who may also have been approved for compensation or pension claims. VCEs can consider researching VBMS as appropriate.

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3.12 DEVELOPMENT FOR ADDITIONAL REQUIRED INFORMATION

a. If an eligibility determination cannot be made after reviewing the primary source information and soliciting information from DPRIS, VCEs should simultaneously develop to the claimant and DoD.

1. When developing to the claimant, VCEs should request a copy of the member's DD Form 214 (member 4 copy) (if not already received) in connection with the individual's claim, official military orders, or if applicable a statement of service from the claimant's Commanding Officer or authorized designee.

2. When developing to DoD, VCEs should only develop for the following service related issues (when not available already):

- Service period dates if primary sources are conflicting
- Character of Service
- Separation Reason
- Title
- Section

NOTE: In all cases, when developing to DoD, VCE's must supply the period of service and the condition on which additional information or clarification is required. Ambiguous development to DoD such as "Verify all Chapter 33 qualifying service" is never permitted. In the request, the VCE should be as specific as possible. Remember, VA (i.e. the VCE) makes the eligibility decision for education benefits. The service departments will provide information as it is asked and they have no authority to determine if service is qualifying for Title 38 benefits.

Until a national database is implemented for DOD development, VCEs should use a local DOD development log when needing to contact the service departments. If the VCE is unaware of this log, they should contact the RPO DOD coordinator.

b. ADDITIONAL TERMS AND CONCEPTS. In order for VCEs to properly interpret service information received from the different departments, the additional terms and concepts must be discussed.

1. The term "Entry Level and Skills Training" means the following:

- Army: Basic Combat Training and Advanced Individual Training (AIT) or One Station Unit Training (OSUT). Enlisted soldiers attend Basic Training (BCT). BCT is either combined with AIT (also known as OSUT) or AIT occurs at another location to earn a military occupational skill (MOS). Additional skill identifier or other training should not be identified as training. (i.e., Airborne School, Defense Language Institute, Ranger or Special Forces Training...).
- Navy: Recruit Training (or Boot Camp) and Skill Training (or so-called "A" School). Enlisted Sailors attend Recruit Training or Boot Camp (RTC). Many attend advanced skill training (apprenticeship) or "A" school to earn a "rating". Others go directly into the fleet without additional training serving as an airman, fireman, or seaman.
- Air Force: Basic Military Training and Technical Training. Enlisted Airmen attend Basic Military Training (BMT). These Airmen attend technical training to earn their Air Force Specialty Code (AFSC) which is similar to a Navy "Rating" or the Army and Marines MOS job identification.
- Marine Corps: Recruit Training and Marine Corps Training (or School of Infantry Training). Enlistees enter Boot Camp. In Boot Camp, the individual will either attend the School of Infantry (SOI) or Marine Combat Training (MCT). Subsequent on-the-job skill training or MOS training should **not** be identified as training. This time is fully creditable under Chapter 33.
- Coast Guard: Basic Training and Skill Training (or so-called "A" School). Enlisted Guardians attend Basic Training which is similar to the Navy, where they attend "A" School to earn a rating. PL 111-377 added "A" School to the definition of entry level and skill training for Coast Guard.

  NOTE: For Army, OSUT was added to the definition effective January 4, 2011. Prior to that date, it was not classified as "Entry Level and Skills Training".

  For Coast Guard, Skill Training (so called "A" School) was added to the definition effective January 4, 2011. Prior to that date it was not classified as "Entry Level and Skill Training".

  From 09/11/2001 to 04/04/2011, Army OSUT and Coast Guard A School would be qualifying and not deductible.

2. Acronyms for some *initial training* performed by Officers:

- BOLC – Basic Officer Leaders Course (Army)
- DCOs – Direct Commission Officers
- OBC – Officer Basic Course
- OCS – Officer Candidate School
- ROTC – Reserve Officer Training Corps
- SMCs – Senior Military Colleges

- TBS – The Basic School (USMC)
- USAFA – United States Air Force Academy
- USCGA – United States Coast Guard Academy
- USNA – United States Naval Academy
- USMA – United States Military Academy
- WOBC – Warrant Officer Basic Course

Generally a VCE should not develop for any initial training for officers. Officers complete their training (or are considered trained) before commissioning. VA does not reduce an officer's qualifying active duty for entry level or skill training performed while on qualifying active duty.

Scenario	ID	Reason
30 continuous days of creditable service, separated for a service connected disability	O	Enter Initial Entry and Initial Skills Training in Term Solution (LTS) if known, and remove if not calculate correct benefit level. Known iss instances LTS will not indicate 100% benefit
No honorable or creditable service	O	Enter Initial Entry and Initial Skills Training in known, do not develop. Eligibility will not cha
30 months or more of creditable service	O	Enter Initial Entry and Initial Skills Training in known, do not develop. Benefit level will not
Less than 30 months of creditable service with more than one year of service prior to 9/11/01	O	Enter Initial Entry and Initial Skills Training in known, do not develop. Presumed to have b prior to 9/11/01.
Any length of service and excluding first 3 years for Loan Repayment Plan (LRP)	O	Enter Initial Entry and Initial Skills Training in known, do not develop. Benefit level will not
Less than 30 months of creditable service as an officer	N	Do not identify officer training, this is fully cre
Less than 30 months of creditable service as an enlisted member	Y	Identify initial entry and skill level training an data into LTS. Develop when not in block 12 not listed in the Veterans Information Solutio or whenever uncertain.

3. Block 12h of a DD214:

The VCE should enter dates identified as Entry Level and Skills Training into LTS as Training. If not indicated in VIS or on the DD Form 214, the VCE must develop to the service department. However, the VCE must be very specific and request verification for the period of initial entry or skill level training when the claimant is at or below the 80% benefit level with all Chapter 33 service included.

NOTE: Remember there is no need to develop when there is one year of active duty before September 11, 2001 or the claimant is an officer in any branch of service.

4. EST development. A VCE should develop to the claimant's service branch when Entry Level and Skills Training information either

- Cannot be found
- Is found but there are discrepancies in the data, or
- If data has changed or disappeared

When developing for Entry Level and Skills Training information, the request should list exactly the information needed.

EXAMPLE: When requesting Entry Level and Skills Training information for a claimant who was in the Army, the VCE would request the following:

- Service periods that the claimant was in Basic Combat Training
- Advanced Individual Training and,
- One Station Unit Training

5. Other Examples. As previously stated, all Reserve and National Guard required IADT is ordered under Title 10 USC 12301(d), meets the definition of active duty under Chapter 33.

Some portions of IADT may not need to be labelled "entry level and skill training" as only those specific courses codified in 38 USC 3301(2) are to be identified as training under Chapter 33.

Title 10 ADT, ADOS, and ADSW are performed under 12301(d) meets the definition of active duty under Chapter 33.

Title 32 (National Guard Only) ADT, ADOS and ADSW are **not** creditable service unless in support of a National Emergency and supported by federal funds under Section 502(f). This is a rare occurrence. VCEs should not enter service that does not meet the definition of "active duty" into the LTS.

C. CONTROL FOR DOD VERIFICATION. While VCEs will use the approved DoD development spreadsheet to ensure the appropriate question is submitted to the appropriate Point of Contact (POC), it is the VCE's responsibility to ensure they maintain control of the claim.

When a VCE has determined the DoD POC must be contacted, development is required to the claimant directly as well. The VCE should send the appropriate development letter explaining ***specifically*** what is needed and advise the claimant a request has been submitted to the service department as well. This letter should be explicit explaining a final decision cannot be made until this information is received. The claimant may have the documentation necessary to adjudicate the claim. The letter should explain how the claimant can submit the documentation. A copy of all development (letters, requests, etc.) should be placed in the claimant's TIMS folder and control in BDN and TIMS set for 90 days from the date of the letter. No end product is authorized for development.

As discussed in Subchapter 6, Duty to Assist (DOA) of this Chapter, service information found on DD Form 214s and other service documentation is considered to be under federal custody. Therefore, development must continue until the claimant supplies the information, the service department responds with the information requested OR the service department responds with a statement indicating the information is non-existent or cannot be obtained.

Repetitive development to the service departments will not expedite the claims. Once the VCE has requested the information to the service department, additional requests should not be routinely submitted.

At the time of development, as stated, the VCE should review all creditable service on file and issue a COE or award benefits based on any period of service for which development is not needed, if at all possible. If the award is unable to pay at the highest level claimed, the award letter must explain, specifically to the claimant what is required to perfect the claim. The VCE and Senior VCE are entitled to a 400 end product for the interim decision. ***However, the controlling end product (whether it is an original or supplemental) cannot be cleared until a final decision has been made.*** At the time of the interim decision, the VCE should extend the end product in BDN for 90 days from the original date of development. The claim should remain open in TIMS and placed in AWAIT Mail until 90 days from date of the original development to the service department.

The RPO must control the claim while a request is pending from the service department. Once the end product has matured to 90 days, if no final decision may be made, the claim information should be forwarded to the Operations team (VAVBAWAS/CO/222) for situational awareness that the service department has not responded. This email should include the claimant's name, the service branch information from which the information was requested (if National Guard, include the state), the last four digits of the Social Security number or identification number, and a

summary of the missing information. VCEs must continue to diary the claim in BDN and TIMS until the Operations team provides additional guidance.

CAUTION: Remember, if the VCE can pay **ANY** part of the claimant's award, this must be done. Do not withhold any payments to any claimant while waiting on the service department to verify additional service.

NOTE: Additional guidance is forthcoming regarding proper DOD kicker development. VCEs should always pay basic eligibility to claimants and develop separately for kicker information. Until that is updated, control the development for kicker contracts when necessary, using a supplemental end product with the development to both the service department and the claimant.

If the VCE validates through the cumulative sources that the period of service is not qualifying, the VCE should prepare a disallowance through BDN or LTS and notify the Veteran. A notice of appeal and procedural rights will be enclosed.

If a Veteran previously filed an application as a serviceperson, a separate formal application is not required upon discharge. However, the VCE will request whatever information may be necessary to determine the person's eligibility as a Veteran such as a member-4 copy of DD Form 214.

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SUBCHAPTER III. MISCELLANEOUS SERVICE ISSUES

3.13 STATUTORY BARS TO BENEFITS

a. There are certain statutory bars which apply to all VA benefits regardless of the character of discharge. A summary of these statutory bars follows:

- discharge of a conscientious objector* who refused to perform military duties,
- discharge by reason of the sentence of a General Court Martial,
- resignation of an officer for the good of the service and desertion
- treasonous or subversive acts
- other than honorable discharge for AWOL exceeding 180 days unless there were compelling circumstances.

*Conscientious objector status is not a complete bar to benefits. Rather it just bars benefits based on that period of service. So, VCEs should disregard that period but he or she would still be entitled for any periods of service **not** covered by the conscientious objection discharge. In accordance with 38 USC 5303, discharge by reason of conscientious objection is an absolute bar to any VA benefits (38 USC 5303(a): "discharge of any such person on the grounds that such person was a conscientious objector who refused to perform military duty… shall bar all rights of such person under laws administered by the Secretary based upon the period of service from which discharged or dismissed"). The reason for denial is not "character of discharge"; rather, it is "statutory bar to benefits by reason of discharge for conscientious objection."

VCEs must make an administrative decision if they grant benefits on any statutory bar. Refer to Chapter 2 regarding administrative decision procedures.

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3.14 CHARACTER OF DISCHARGE

a. Chapter 32, Chapter 35, and Section 903. For these benefits (if the claimant was on active duty) the claimant's discharge must be "under conditions other than dishonorable."

b. Chapter 30 and Chapter 33. For these benefits, only discharges that are specifically "honorable" are acceptable. However, conditional discharges are possible. Please refer to Part V or XII for specific rules. In addition, there are exceptions under Chapter 33 in which the character of discharge does not have to be honorable if discharged for a disability. Please refer to part XII for additional information.

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3.15 SERVICE ACADEMY PREPARATORY SCHOOLS

a. Preparatory Schools. The Army, Navy, and Air Force provide preparatory school training for qualified personnel who are candidates for appointment from the enlisted ranks to one of the service academies. This training is provided at the U.S. Military Academy Preparatory School, the U.S. Naval Academy Preparatory School, and the U.S. Air Force Academy Preparatory School. Service at an Army, Navy, or Air Force preparatory school is considered active duty. The General Counsel has ruled that assignment to a preparatory school is not equivalent to assignment to a service academy because a preparatory school has no connection with an academy.

NOTE: In 1994, the General Counsel affirmed the previous decision that characterizations of an individual's service at the U.S. Air Force Academy Preparatory School for purposes of entitlement to Veterans' benefits depends upon the status in which the individual enters this school. Service by an individual attending this school as a reservist called to active duty for the sole purpose of attending this school constitutes "active duty for training" and not active duty. Service by an enlisted person on active duty who is reassigned to this school without a release from active duty constitutes a continuation of that enlisted person's active duty.

b. Service Academy. Chapter 30, 32, 33, and Section 903 regulations require service as a cadet or midshipman at a service academy must be excluded from computation of periods of active duty.

NOTE: See Part V, Chapter 1, for the effect of graduating from a service academy on Chapter 30 eligibility. See Part XII for information regarding Chapter 33, Information about Benefits, Excluded Service.

Title 10 USC 4348(a)(2)(B) for USMA, Title 10 USC 6959(a)(2)(B) for United States Naval Academy, and Title 1010 USC 9348(a)(2)(B) for United States Air Force Academy "will serve on active duty for at least five years immediately after such appointment".

In addition, time served at the Coast Guard Academy after January 4, 2014 is considered as non-qualifying service

EXAMPLE: A West Point student graduates and is commissioned on May 27, 2003, and served through May 26, 2008. The individual's academy commitment ended on May 27, 2008. The five year excluded period runs from May 27, 2003 through May 26, 2008. The first date eligibility for a period of qualifying service may be counted is May 27, 2008.

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3.16 DEDUCTIBLE TIME

Two types of military service (not-on-duty time and non-creditable time) are not included as active duty for education benefit purposes. This information can be found on DD Form 214.

a. Not-on-Duty Time. Not-on-duty time does not count as active duty under Chapters 30, 32, 33, and Sections 901 and 903. Periods of service which constitute not-on-duty time are defined by 38 CFR 3.15 and include:

(1) Time lost on absence without leave (without pay).

(2) Time lost while under arrest (without acquittal).

(3) In desertion.

(4) Time lost while undergoing a sentence of court-martial.

b. Non-creditable Service. Non-creditable service does not count as active duty under Chapters 30, 32, 33, and sections 901 and 903. Periods of non-creditable service are:

(1) Periods while assigned by the service department to a civilian school for a course substantially the same as established courses offered to civilians. The term "civilian school" means any public or private school providing adult education, including colleges or universities, and schools providing business, trade, vocational, or technical training. It is not material that there were curricular deviations incident to the particular student's military assignments, or that a regular academic degree or certificate was not issued, as long as the course was one within the regularly prescribed program or curriculum of the school. A DD Form 214 will normally provide the necessary information.

NOTE: See Part V, Chapter 1, for the effect that training at a "civilian school" has on Chapter 30 eligibility.

(2) Service under the provisions of Section 12103 (formerly Section 511(d) of Title 10) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(3) Periods of military service in an excess leave status.

NOTE 1: A Serviceperson attending school in an excess leave status, if otherwise eligible, may be paid at the rates payable to Veterans including additional allowance for dependents. Excess leave is defined as leave without pay and is granted only by the service department under emergency or unusual circumstances. The service department places the individual in a "leave without pay" status; the Serviceperson pays the tuition and fees and agrees to extend the length of service on active duty. Education benefits may be authorized for the full period of enrollment certified by the school even though there may be a brief period of active duty during a holiday or during any other day the school was not in session which did not interrupt the continuity of pursuit of the course.

NOTE 2: There is an important distinction in service department programs in which the Serviceperson attends a civilian school while on excess leave without pay and other programs in which the Serviceperson attends a civilian school while on a temporary "duty assignment with full pay and allowances." In the latter instance, the student is considered to be on active duty and should be paid education benefits at the rates payable to Servicepersons unless the military is paying for the training.

(4) Periods of Service Not considered Active Duty for Chapter 33

- Was assigned to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,
- Served as a cadet or midshipman at one of the service academies, or
- Served under the provisions of Section 12103 (d) (initial skills and training) of Title 10 pursuant to an enlistment in the Army National Guard, Air National Guard or Reserve components.
- Was called up to active duty from a reserve component of the Armed Forces, Army National Guard or Air National Guard, under Title 10 and it was under a section other than 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 or Section 712 of Title 14 for the USCG Reserve.
- Was called up to active duty under Title 32 that was NOT under Title 32 502 (f) for the purpose of responding to a national emergency declared by the President and supported by Federal Funds.

- Served full time in the National Guard under Title 32 for a purpose other than organizing, administering, recruiting, instructing, or training.

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SUBCHAPTER IV. TRAINING UNDER PRIOR BENEFIT PROGRAMS

3.17 GENERAL

a. Basic Prior Training Determination. The VCE must first determine the amount of prior training under other programs in all cases where prior training is indicated. No person may receive benefits exceeding a total of 48 months under Chapters 30, 32, 33, 1606 or 1607 or 81 months for individuals who use Chapter 35 with entitlement to other VA education programs by combining benefits under two or more benefit programs.

NOTE 1: Development is necessary before initially paying current benefits when the amount of prior training and the current award could exceed 48 months or 81 months.

NOTE 2: Important Points for understanding the 81-month rule

1. The extension does not apply to individuals who have **exhausted** 48 months of benefits **prior** to October 1, 2013 (i.e. it does not apply if the BDN No Pay Date is prior to October 2, 2013, or the LTS Entitlement Exhaust Date is **prior** to October 1, 2013).

2. Individuals who use non-35 benefits **cannot exceed** 48 months of entitlement between those non-35 sources.

b. Prior Training Steps. These general steps are to assist VCEs in identifying prior training information and determining the amount of any prior training a claimant may have taken.

(1) The VCE must review the claimant's application. Does he/she claim additional training under another VA education program? Look to see if he/she claims prior training under Chapter 35 under a different file number.

(2) Using BDN, the VCE should search for additional master records. Use the MINQ command to access Chapter 1606, 1607, 30, 31, 33, and 32 master records. Remember, there could be additional prior training taken under Chapter 35 under a different claim number.

(3) Determine all prior VA training. VCEs must account for all prior VA training.

(4) Prior VA training must be entered into BDN/LTS to ensure entitlement does not exceed 48 or 81 months as appropriate. Specific instructions are in each part of M22-4 regarding the benefit type.

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3.18 COMPUTATIONS FOR TRAINING UNDER PRIOR VA BENEFIT PROGRAMS

a. Prior VA Training Computations. All educations, Chapters 30, 31, 32, 33, 35, 1606, 1607, and Sections 901 and 903 should be reviewed. In most cases, determine the prior training by BDN screens or LTS.

b. Procedures. After obtaining all available records of the applicant's prior training under prior VA laws, determine the total amount of entitlement used. Enter this total amount of entitlement into

BDN or LTS as prior training except when processing Chapter 32 benefits. BDN determines the current entitlement. For benefit specific procedures, see the following:

(1) Chapter 30. Review M21/M23 for any prior entitlement used.

(2) Chapter 31. Review M33/M34 for any prior entitlement used.

(2) Chapter 32. Review M26/M27 for any prior entitlement used.

(3) Chapter 33. Verify in both BDN **and** LTS for any prior entitlement used.

(3) Chapter 35. Review M21/M23 screen for any prior entitlement used.

(4) Chapter 1606. Review M21/M23 screen for prior entitlement used.

(5) Chapter 1607. Review M21/M23 screen for prior entitlement used.

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SUBCHAPTER V. RULES OF EVIDENCE

3.19 EVIDENCE REQUESTED FROM CLAIMANT

a. Complete Request. Use BDN or LTS for development if it will produce a letter which clearly tells the claimant what evidence is needed; otherwise, send the appropriate PCGL development letter.

b. Enclosures. Enclose all necessary forms or website links when writing to a claimant.

c. Email messages and Telephone usage. Use of email messages and telephone development is strongly encouraged when a written response is not required. VCE must be certain to follow appropriate security and privacy issues when corresponding through email to non-VA personnel including applicants.

(1) Document all information received by telephone on VA Form 119, Report of Contact.

(2) Award and denial letters must include reference to any telephone evidence used in the decision. VCEs should include the date of the call and the person supplying the information.

d. Notice of Time Limit. The VCE should advise the claimant if they fail to furnish the evidence within the specified time limit it may result in the disallowance of the claim. Specify the time limit.

e. Controls for Submission of Evidence

(1) Unless otherwise specifically provided, establish a 30-day control for submission of evidence.

(2) If the evidence needed is not received within 30 days, disallow the claim for failure to prosecute. Notify the claimant of the reason for the disallowance and of the one-year time limit for submission of the evidence. Furnish notice of procedural and appellate rights.

(3) If the claimant furnishes some but not all requested evidence and the evidence submitted does not permit award action, do not disallow the claim for failure to prosecute until 30 days have elapsed from the date the evidence was requested. After 30 days, disallow the claim, advise the claimant specifically what essential

evidence was not received and of the one-year time limit for submission of the evidence. Furnish notice of procedural and appellate rights.

(4) If the claimant furnishes part of the evidence before 30 days have elapsed and some benefits can be awarded, do not defer payment pending receipt of the rest of the evidence. Take award action. Inform the claimant of the evidence considered the reasons for the decision and that action on the remaining aspects of the claim has been deferred pending receipt of the other requested evidence. Enclose notice of procedural and appellate rights. **Maintain pending-issue control until final action is taken**. If denial of the additional benefits results from the failure to furnish requested evidence, inform the claimant of the denial, outlining the evidence that was requested but not furnished and of the one-year time limit for submission of the evidence. Furnish notice of procedural and appellate rights.

(5) It is improper to deny a claim simultaneously with development of the same issue. A control with an accurate date of claim must be maintained as long as development is pending. If initial development raises new issues which must be resolved or if initial development failed to request essential evidence, extend the control for 30 days from the date of the most recent request for evidence.

(6) Grant an extension of a control for evidence if requested by the claimant or the claimant's authorized representative as long as a good faith effort is being made to furnish the requested evidence. An extension does not affect the statutory time limit for submission of evidence or the effective date of an award.

f. Address Unknown

(1) If any correspondence to a claimant, including award letters or requests for evidence, is returned as undeliverable, review the file to ensure the current address was used.

(2) If a request for evidence essential to establish entitlement addressed to the claimant's last known address is returned unclaimed, do not extend the time limit for submitting the evidence. In this situation consider the claim abandoned after the expiration of one-year from the date of request. See 38 CFR 3.158(a).

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SUBCHAPTER 6. DUTY TO ASSIST

NOTE: This subchapter covers the specifics of "Duty to Assist" (DTA) but is not all inclusive. VCEs may go above and beyond DTA in some cases, but must always fulfill the minimum level of DTA.

3.20 BACKGROUND

a. Origin. The Veterans Claims Assistance Act (VCAA) of 2000 requires VA to make reasonable efforts to assist a claimant in obtaining the evidence necessary to substantiate the claim. This includes any relevant records that the claimant identifies and authorizes VA to obtain. If attempting to obtain records from a Federal department or agency, we must continue our attempts unless it is reasonably certain such records do not exist or that further efforts to obtain the records would be futile.

b. Decisions. Decisions on VA benefit eligibility and entitlement are based on the evidence of record. Evidence consists of documents and information in any form provided by, or obtained for, a claimant. VA must fulfill its duty to assist by obtaining all necessary evidence before making a

decision on a claim. VA is obligated to assist a claimant in developing all pertinent facts concerning a claim and render a decision granting every benefit that is supported by law. VA is also obligated to protect the interests of the Government.

c. Identify. Before requesting evidence, identify all issues, determine what additional evidence is needed, and ascertain the best sources for the evidence and initiate development. Request evidence from all sources simultaneously including the claimant, but *ensure* the evidence is needed before requesting it.

d. Information. Keep the claimant informed of the reason(s) for any excessive delay in the processing of his or her claim. Use any appropriate form of communication (i.e. telephone, letter or email message). Be mindful of privacy issues and security concerns. The VCE should ensure a copy of any development letter is placed in the claimant's TIMS folder. If in lieu of a locally produced letter, the VCE communicates by telephone or email to the claimant, documentation of the conversation should also be placed in the claimant's TIMS folder. Completing VA Form 119 is the best form to memorialize a telephonic conversation. As stated, if email is used, the VCE must ensure privacy and security concerns are followed.

e. Burden of Proof. While the burden of proof ultimately rests with the claimant, VA will make reasonable efforts to help the claimant obtain any evidence he or she specifically identifies, or any evidence which is reasonably suggested to exist which might enable the claimant to substantiate his or her claim. The claimant's certified statement is usually sufficient evidence to establish a point in issue. In some cases more is required. A certified statement is necessary to ensure the claimant is the person providing the information. When the VCE speaks to a claimant on the telephone, ensure it is the claimant providing the information (or a designated representative). As a reminder, if the telephone is used, the VCE should use appropriate identification protocol (i.e. verify the claimant's address, last four digits of SSN, etc.) Do not change pertinent privacy information (i.e. direct deposit information, address change, etc.) without confirming the identity of the speaker.

The claimant's statements will be accepted as true in the absence of contradictory evidence. It is appropriate to request further evidence if there is a substantial reason to challenge a claimant's statement, i.e., something beyond mere suspicion or doubt.

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3.21 APPLYING DUTY TO ASSIST

a. Application When information is needed, development must be done with Department of Defense (DoD), schools, Defense Finance and Accounting Service (DFAS), Veterans Information System (VIS), Defense Personnel Retrieval Image System (DPRIS), etc. DTA requires VA to make all reasonable attempts to assist a claimant in obtaining necessary evidence to substantiate his or her claim for education benefits. Therefore, if routine attempts to obtain the information are unsuccessful, VCEs must take additional steps to substantiate the claim by providing more specific information to the claimant on what information is needed, advising the claimant what he or she needs to do, and informing the claimant of any efforts VA will take to obtain the information. If the necessary information is still not received and the claim is denied based on the evidence of record, VCEs must inform the claimant what information VA was unable to obtain, the efforts VA made to obtain this information, and that the claimant is responsible for submitting any relevant information to reopen the claim.

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3.22 WHEN NOT TO APPLY "DUTY TO ASSIST"

Duty to Assist does not apply if it is clear there is no legal basis for the claim or if undisputed facts render the claimant ineligible for benefits. If there is no possibility that any additional information or assistance will affect the determination of a claimant's eligibility, DTA actions are not required.

Examples of When DTA is NOT required (not an inclusive list):

1. A VA Form 22-1990E is received requesting Chapter 33 TOE benefits for a child of a Navy Veteran. After researching in VIS the VCE notices the transferor did not transfer any entitlement to their spouse or dependent, then DTA doesn't apply and there's no need for further development.

2. If a Chapter 30 claimant serves a total of 18 months on active duty and receives a "General, Under Honorable Conditions" discharge, DTA doesn't apply. Appeal rights are required, but a determination on the claim can be made without requesting any additional information.

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3.23 STEPS TAKEN APPLYING DUTY TO ASSIST

VCEs should be familiar with the difference between a formal and informal claim. VCEs should ensure an application received contains the following information:

(1) The claimant's name;

(2) The benefit claimed;

(3) His or her relationship to the Veteran, if applicable;

(4) Sufficient information for VA to verify the claimed service if applicable;

NOTE: While technically DTA doesn't apply if the chosen benefit isn't indicated on the application, the policy to assist the claimant with his or her generic request for benefits is still VA's standard procedure.

To fulfill DTA, VCEs must make the following reasonable efforts (if applicable) to help the claimant obtain the necessary information to substantiate his or her claim:

1. When additional information is needed from a **Federal** agency—

The VCE must make as many requests as necessary to obtain the needed records or evidence. VA will stop attempting to obtain records if it is concluded the records do not exist or efforts to obtain the records would be futile.

EXAMPLE: A claimant's 30D screen shows "00 INELIGIBLE" and no deductions. The VCE has requested proof from the Army that the claimant declined MGIB upon entry on active duty. The Army informed us that they do not have a DD Form 2366 in their records for the claimant. Subsequent requests would be futile. (After allowing the claimant 30 days to submit any evidence in his or her possession, the VCE should make a determination based on the available evidence. The determination can be made earlier if the claimant provides a copy of the document.)

The claimant should cooperate fully with VA's efforts to obtain records from Federal agencies, providing enough information to identify and locate the claimant's records. Such information should include (but isn't limited to) the identity of the agency holding the records and the approximate time frame covered by the records. If required, the claimant must authorize release of the information to VA.

NOTE: It is paramount under DTA, the VCE cannot make a decision of record until the Federal agency has responded that the information is unavailable. This is important even if the claimant has responded he/she does not have the information. A statement from the Federal agency must be in the file that the information is unavailable before the final decision is made.

2. When additional information is needed from a **non-Federal agency**—

VCEs must make all reasonable attempts to obtain needed records from non-Federal agencies. Generally this means one initial request and, if necessary, at least one follow-up request (unless

the evidence requested doesn't exist or it's determined that follow-up efforts will be futile). VCEs should control the first request for 30 days and send the follow up email no earlier than the 31st day following the initial request. VCEs should remember to simultaneously develop to the claimant and advise him/her what is needed for the claim and to whom they are developing.

The claimant should cooperate fully with VA's efforts to obtain records from non-Federal agencies, providing enough information to identify and locate the claimant's records. Such information should include (but isn't limited to) a contact point in a company or agency holding the records and the approximate time frame covered by the records. If required, the claimant must authorize release of the information to VA.

If, after the second request to a non-Federal entity, information isn't available, the VCE make made a decision on the claim based on the available evidence. This is not a disallowance for failure to furnish.

If an additional source for the information is discovered, the VCE must request the evidence from that source, allow 30 days for a response, and, if needed, make at least one follow-up request. If a follow-up request is sent, the VCE must control the claim for an additional 30 days.

If a claimant subsequently submits evidence within one year of the date of the original request, the VCE must re-adjudicate the claim. If the claimant is found to be eligible, VA will award retroactive benefits based upon the date of the original claim.

NOTE: VA cannot pay any fees that might be charged for the release of requested information or records.

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3.24 WHEN INFORMATION CANNOT BE OBTAINED

a. Notification. After development efforts are exhausted for the purposes of obtaining relevant records, a VCE must notify the claimant that VA is unable to obtain the record. VCEs must include the following information during the notification process:

1. Identify the records VA is unable to obtain

2. Briefly describe the efforts made by VA to obtain such records

3. Explain that the VA will decide the claim based on the evidence of record but that the claimant may always provide records with relevant information to update their eligibility status at a later date

4. Notice that the claimant is ultimately responsible for obtaining the evidence. You should add the paragraph found in Figure 3.01 into the award or denial letter when a decision is rendered based on the evidence of record and edit the highlighted parts for what was requested and to whom VA sent to the request

b. Denial action. It is imperative VCEs deny the claim based on evidence of record. The VCE cannot deny the claim because of failure to furnish evidence which is available at another agency. The correct decision is to deny for an appropriate reason. The VCE should ensure the denial letter is suppressed in LTS or BDN and use the appropriate PCGL letter. This letter is clear in the reason for the denial and reiterates who was contacted to assist in gathering the needed information. (Refer to Figure 3.01 for an example)

NOTE: If the VCE can decide in the claimant's favor and award part of the request, he should. Do not deny the entire claim.

EXAMPLE: Claimant applies for Chapter 30 benefits and indicates on the application he is eligible for a kicker. He has not provided a copy of his kicker contract. After confirming with DOD, the VCE cannot confirm the kicker eligibility. VCE can establish eligibility to Chapter 30 benefits

and awards appropriately. Confirmation cannot be received from DOD on the kicker information. The denial is only for the additional kicker amount.

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3.25 REASONABLE DOUBT RULE

a. The reasonable doubt rule is found at 38 CFR 3.102. Every person involved in the processing of claims must be thoroughly familiar with this regulation.

b. It is understood that if there is a balance of evidence for and against the claim, the VCE should favor the claimant.

After obtaining all relevant evidence, the VCE must evaluate the evidence and determine if the evidence in favor of the position held by the claimant is of equal or greater weight than the evidence to the contrary. If the evidence supports the position of the claimant, the claim is allowed. If the evidence does not support the claimant, the claim is disallowed. If the evidence is approximately balanced, resolve doubt in favor of the claimant.

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3.26 PRIMARY AND SECONDARY EVIDENCE

a. Primary Evidence. In most instances entitlement to VA benefits can be established by any evidence which is of sufficient weight to convince the VCE of the point in issue. However, for purposes of establishing certain events, e.g., marriage, child's relationship, divorce, or death, VA regulations require specific types of evidence.

(1) If there is conflicting information or a protest by an interested party, there may be only one acceptable form of proof of an event. For example, under 38 CFR 3.205(b) the only acceptable documentary proof of dissolution of a marriage (other than by death) is a certified copy or abstract of a final decree of divorce or annulment.

(2) In other instances, e.g., marriage and child's relationship, VA regulations specify primary and secondary forms of evidence. A copy of the public record of marriage, birth or adoption is considered to be primary evidence of marriage or the child's relationship. Normally, primary evidence of the event is required to establish marriage or the relationship of a child. However, under certain circumstances, secondary evidence can suffice to establish marriage or a child's relationship.

b. Secondary Evidence. Secondary evidence of an event is any evidence which does not qualify as primary evidence. Consider secondary evidence only after all attempts to obtain primary evidence have been unsuccessful and the claimant has given a satisfactory explanation why primary evidence is not available.

Acceptable reasons for unavailability of primary evidence include evidence the primary record was destroyed and no copy exists or evidence has shown no official documentary evidence of the event was ever prepared. The mere fact the claimant does not remember where the primary evidence is located is not an acceptable reason for resorting to secondary evidence.

NOTE: Any time a marriage or child's relationship has been "deemed valid" for another benefit in VA, it will be accepted as true for all Education benefits. Do not develop for proof of dependency if another station within VA has proven the relationship.

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3.27 BURDEN OF PROOF AND THE WEIGHING OF EVIDENCE

Education Service has coordinated with Compensation Service to ensure VCEs understand how to develop for information on a claimant's burden of proof and the weighing of evidence. This includes responsibilities of VA and claimants for securing evidence and accepting entries a claimant makes on *VA Form 21-686c* as proof of an event, and evaluating and weighing evidence.

VA must make reasonable efforts to assist a claimant in securing evidence, but the claimant *always* has the initial burden of proof. This means that unless the claimant furnishes evidence on each element needed to establish the point at issue, the VCE must deny his/her claim.

EXAMPLE: A claimant alleging the existence of a deemed-valid marriage must meet the requirements in 38 CFR 3.52 to establish the marriage as valid for VA purposes. If the claimant fails to provide evidence showing he/she meets those requirements, the VCE must deny his/her claim. Nevertheless, the VCE may, because of its duty to assist, provide reasonable assistance to secure the evidence.

Except as noted in 38 CFR 3.204(a)(2), VA will accept the entries a claimant or beneficiary makes on *VA Form 22-1990 or any proper form* as sufficient proof of

- marriage
- dissolution of a marriage
- birth of a child
- introduction of a stepchild into a Veteran's family, or
- death of a dependent

Note: Unless there are inconsistencies in a claimant's statement, the policy described in the above paragraph allows VCEs to establish the existence of a familial relationship between a Veteran and another individual *without* reviewing the claims folder. It is appropriate to request further evidence from a claimant if there is substantial reason to challenge his/her entries on VA Form 22-1990. (A substantial reason is something beyond mere suspicion or doubt.)

Once all procurable evidence is of record, the VCE must evaluate the competency, credibility, and persuasiveness of the evidence, and determine if the competent and credible evidence in favor of the claimant's position is of equal or greater weight than the evidence to the contrary.

Use the table below to determine whether or not a point is established.

If scales weighing the evidence ...	Then ...
tip in favor of the claimant	the point is established.
tip against the claimant	the point is ***not*** established.
are approximately balanced	resolve reasonable doubt in favor of the claimant.

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3.28 PHOTOCOPIES

a. General. Copies or abstracts of public documents, e.g., marriage certificates, birth certificates, death certificates, are acceptable as evidence if VA is satisfied the copies are genuine and free from alteration or defect. Otherwise, VA may request a copy of the document certified over the signature and official seal of the person having custody of such record.

b. Military Service. Copies of original service documents are acceptable only if issued to the claimant by the service department or by a public custodian of records.

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3.29 NEW AND MATERIAL EVIDENCE

a. A claimant must submit "new and material" evidence to reopen a previously disallowed claim.

(1) To qualify as "new", evidence, whether documentary, testimonial or in some other form, must be submitted to VA for the first time.

(2) A photocopy or other duplication of information already contained in a VA claims folder does not constitute new evidence since it was previously considered. In addition, information confirming a point already established should be considered "new" evidence.

b. In order to be considered "material", the additional information must bear directly and substantially on the specific matter under consideration.

c. A determination by VA that information constitutes "new and material evidence" means the new information is sufficiently significant, either by itself or in connection with evidence already of record, that it must be considered in order to decide the merits of the claim fairly. It does not mean the evidence warrants a revision of a prior determination.

d. A decision not to reopen a claim because the evidence submitted is not new and material is an appealable decision. The claimant must be furnished notice of procedural and appellate rights.

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3.30 AFFIDAVITS OR CERTIFICATIONS IN SUPPORT OF CLAIM

a. General. If affidavits or certifications are required by VA regulations or procedures, the requirement may be satisfied by completing a VA form containing the certification statement. Enclose the appropriate VA form with the request for evidence.

b. Use of VA Form 21-4138. If available VA forms are not appropriate, an individual's signed statement on VA Form 21-4138, Statement in Support of Claim, or any other written communication with the appropriate certification, is acceptable.

Additional information regarding the VCAA can be found on the below link:

http://www.gpo.gov/fdsys/pkg/PLAW-106publ475/html/PLAW-106publ475.htm

BVA decisions regarding the Veterans Claims Assistance Act (VCAA):

http://www.bva.va.gov/docs/VLR_VOL3/6-GriffinAndJones-VCAA-TenYearsLaterPages284-321.pdf

http://www.gpo.gov/fdsys/pkg/USCODE-2011-title38/html/USCODE-2011-title38-partIV-chap51-subchapI-sec5103A.htm

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Figure 3.01 DTA Denial Letter Template

DUTY TO ASSIST PARAGRAPH

After a review of your claim for education benefits, VA needed additional information to assist your claim. The following information was requested and needed in order to assist your claim:

- A

- B
- C

An attempt by the VA to obtain, additional evidence on your behalf was unsuccessful. VA requested records from Department of Defense (DoD), yourself, as well as [add additional requests] The VA has made all reasonable efforts to obtain the necessary information to substantiate your claim.

To further your claim for VA education benefits, you must send the evidence requested in the above paragraph. In that case, we'll review the evidence and notify you if our original decision has changed.

> To further your claim for VA educational benefits, you must send the evidence requested in the above paragraph. In that case, we'll review the evidence and notify you if our original decision has changed.

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