

Procedural Advisory: Section 1002 of Public Law 116-315; Expansion of Eligibility for Fry Scholarship.

June 10, 2021

What has Changed: On January 5, 2021, P.L. 116-315 was signed into law. Section 1002 of this law, entitled “Expansion of eligibility for Fry Scholarship to children and spouses of certain deceased members of the Armed Forces,” amends section 3311 of title 38, United States Code (U.S.C). Previously, only a line of duty death while serving on active duty on or after September 11, 2001, qualified for the Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship).

Section 1002 expands the eligibility for the Fry Scholarship by adding coverage for a child or spouse of either:

- An individual who, on or after September 11, 2001, dies in line of duty while serving on duty other than active duty as a member of the Armed Forces.
- A member of the Selected Reserve who dies on or after September 11, 2001, while a member of the Selected Reserve from a service-connected disability.

Additionally, this law incorporates these amendments into 38 U.S.C. § 3322, which bars duplication of certain educational benefits.

RPO Impact: Expanded eligibility may increase the volume of claims received at the Regional Processing Offices (RPOs). Development will be required to verify eligibility for line of duty deaths considered under section 1002.

What RPO Action is Needed: Effective immediately, Veterans Claims Examiners (VCEs) are authorized to issue a Certificate of Eligibility (COE) to beneficiaries who are eligible under the provisions added by section 1002. However, benefit **payments** for training for terms that **begin August 1, 2021 or later** cannot be processed until August 1, 2021.

A. If an enrollment certification is received **prior** to August 1, 2021 for terms beginning August 1, 2021 or later, the VCE should:

- 1) Establish a **diary** end product (EP) in the Benefits Delivery Network (BDN)
 - a. Suspense date = August 2, 2021
 - b. Disposition (DISP) code = “O-1002”
- 2) Update the **TIMS facility code** to “1002” for tracking purposes
- 3) Suspend the file in The Image Management System (TIMS) **individual suspense queue** until August 2, 2021.

Once the diary matures, the VCE should process the enrollment to include any payments under section 1002.

NOTE 1: The Long Term Solution (LTS) will be updated on July 31, 2021 with expanded functionality based upon section 1002. However, the LTS update will not

contain functionality to identify those beneficiaries who established eligibility based upon a line of duty death while on active duty (existing eligibility) from those establishing eligibility under the new expanded criteria. **VCEs are not required to modify LTS AWD-1 for section 1002 prior to the system update.**

NOTE 2: RPO Tracking reports will be updated to facilitate reporting of COEs issued based upon expanded Fry Scholarship eligibility. VCEs must report the number of COEs issued through local leadership for reporting to Education Service.

B. When a VA Form 22-5490 is received for Fry Scholarship, VCEs will do the following:

1) Review for eligibility.

a. Ensure chapter 33 Fry Scholarship or chapter 35 Survivors' and Dependents' Education Assistance (DEA) election was completed on VA Form 22-5490. (See Bar to Duplication of Benefits Section below)

b. Qualifying service period status includes a death on or after September 11, 2001 which occurred in one of three ways:

i. **In the line of duty (LOD) while on active duty.**

1) Verify LOD on active duty in the "Line of Duty Death" section in the Veterans Information System (VIS) on the "Education" tab ("Active Duty Service Periods" section).

a) Department of Defense (DoD) reports death on active duty to VA which displays under this section.

NOTE: VA presumes death on active duty is LOD unless other evidence exists indicating the death was not LOD.

ii. **In the LOD while serving on duty other than active duty as a member of the Armed Forces.** (May be paid only for terms beginning August 1, 2021 or later.)

1. Accept official documentation from military service departments that clearly state the member **died in the line of duty** OR

2. When service documentation is not available, the VCE must review VIS to determine if the Veteran died during a period while in an active or reserve component of the Armed Forces.

a) If the death occurred while not in service, deny the claim.

b) If the death occurred while in service, develop to the service component to verify if the death was in the line of duty either on active duty or on duty other than active duty.

Once response received, either process as eligible or issue disallowance.

- iii. **Due to a service-connected disability while a member of the Selected Reserve.** (May be paid only for terms beginning August 1, 2021 or later.)
 1. Review VIS – “Military History” tab – Reserve Component Codes (RCC) column (“National Guard & Reserve Service Periods” section) to determine if death occurred during a period while in the Selected Reserves. If not, VCE should develop with service component when service information is unclear.
 - a) Death determined as a result of a service-connected disability.
 - i. Review Veterans Service Center (VSC) records for rating. See [M22-4, Part 7](#), Chapter 1 and 3 for in-depth guidance for verifying and developing for a service-connected death.
 - ii. Accept rating when provided by the beneficiary.
 2. Deny claim if the death did not occur while the Veteran was in the Selected Reserves or if the Veteran’s death was not rated service-connected.
 - 2) Process the claim in the LTS by selecting “FRY” as the entitlement source when creating the work product. See [M22-4, Part 12, Chapter 8](#) for step-by-step directions on how to complete a claim in LTS for a child/spouse applying for the Fry Scholarship.
 - a. VCEs should deny claims when:
 - i. The beneficiary is not a child or spouse of a deceased Veteran.
 - ii. The Veteran is not deceased.
 - iii. Death occurred prior to September 11, 2001.
 - iv. The Veteran’s death did not occur during a qualifying service period status.

Bar to Duplication of Benefits: A child entitled to both the Fry Scholarship and chapter 35 must choose between the two. Similarly, spouses may not receive assistance under the Fry Scholarship and chapter 35 but must make an irrevocable election to relinquish one of those benefits in order to establish eligibility under the elected benefit.

Exception: Section 3322(h) barring entitlement to both the Fry Scholarship and chapter 35 based on the same event or period of service was added by section 111 of PL 111-377 with an effective date of August 1, 2011. VA has always interpreted this provision and its effective date to mean the bar to duplication is not applicable to deaths occurring prior to August 1, 2011 and will consistently apply this rule to those now eligible based upon section 1002 of PL 116-315.

If the beneficiary has already used chapter 35 benefits based on the death but the death did not qualify for Fry Scholarship prior to section 1002, then the beneficiary has not yet made an election to apply that same event or period of service to either Fry scholarship or chapter 35 because, prior to section 1002, that election was not applicable. In these situations, VA will not bar the person, under 3322(h), from now using the death to qualify for Fry scholarship (essentially converting from chapter 35 to Fry Scholarship). The beneficiary will now need to elect Fry scholarship in lieu of chapter 35 and, from that point forward, the 3322(h) bar to duplication will apply. The beneficiary's entitlement to Fry scholarship benefits will be limited by the limitation on aggregate benefits in 38 U.S.C. 3695 (81-month/48-month rule).

Questions: If you have any questions, please direct them to the Education Service [Procedures Team](#) via email.

V/R
Procedures Team