

members. Previously, the definition of immediate family members included a surviving spouse only if unmarried. The regulation change defines immediate family members for purposes of disinterments to include a surviving spouse whether or not the spouse had remarried. This is necessary since the emotional ties of the surviving spouse are sufficient to justify his or her consent as a condition of disinterment. This document also makes nonsubstantive changes for purposes of clarification.

**DATES:** This rule is effective November 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Greenberg, Program Analyst, or Mrs. Sonja McCombs, Program Analyst, Communications Division (402B1), National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202-273-5179 or 202-273-5183 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** A document was published in the **Federal Register** on June 20, 1996 (61 FR 31479), which proposed to change the definition of immediate family members for purposes of disinterments to include a surviving spouse whether or not the spouse had remarried. The document also proposed to make certain nonsubstantive changes. No comments were received. Accordingly, based on the rationale set forth in the proposal and in this document, the proposed changes are adopted as a final rule without change.

### Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule concerning disinterments from national cemeteries (38 CFR 1.621) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been assigned OMB Control Number 2900-0365.

This collection of information included in 38 CFR 1.621 concerns an application for authority to disinter remains that must be submitted on VA Form 40-4970. The provisions of § 1.621 are amended to reflect that the written and notarized consent of a remarried surviving spouse is a prerequisite for a disinterment from a national cemetery.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

### Regulatory Flexibility Act

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because the amendment does not affect any small entities. Only individual VA beneficiaries could be directly affected.

The final rule is not subject to OMB review pursuant to E.O. 12291.

(Catalog of Federal Domestic Assistance Number for programs affected by this regulation are 64.201 and 64.202)

### List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Privacy, Security.

Approved: July 28, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

### PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. In § 1.621, paragraph (c) is amended by removing the second sentence; paragraph (d) and the designation “[Reserved]” are removed; paragraph (e) is redesignated as paragraph (d); and paragraphs (a) and (b)(2) are revised to read as follows:

#### § 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the

disinterment. For purposes of this section, “immediate family members” are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent’s parents will be considered “immediate family members.”

(b) \* \* \*

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

\* \* \* \* \*

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### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 21

RIN 2900-AI45

#### Survivors and Dependents Education: Extension of Eligibility Period

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It restores provisions that govern the extension of the period eligible spouses and surviving spouses have to use Survivors’ and Dependents’ Educational Assistance (DEA).

**EFFECTIVE DATE:** October 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-273-7187.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on January 9, 1997 (62 FR 1303), VA proposed to amend the “Survivors’ and Dependents’ Educational Assistance Under 38 U.S.C. Chapter 35” regulations which are set forth in 38 CFR 21.3001 *et seq.* It was proposed to add to the regulations a definition and a rule concerning qualifying for an extension of time for a spouse or surviving spouse to use Survivor’s and Dependents’ Educational Assistance. Such an extension is permitted when she or he could not

complete a program of education within the normal ten-year period for doing so due to a physical or mental disability that is not the result of willful misconduct. This definition and rule were removed in error from the Code of Federal Regulations when § 21.1043 was removed.

Interested persons were given 60 days to submit comments. One comment from an individual was received.

That individual suggested that, in addition to making the proposed changes, VA should restore § 21.1043 to the Code of Federal Regulations. He argued that by doing so a Vietnam Era veteran who had been unable to complete his or her training within the ten-year period allowed under the Vietnam Era GI Bill due to a physical or mental disability would be able to resume training under the Vietnam Era GI Bill.

After careful consideration VA has determined that there is no legal basis for restoring § 21.1043 to the Code of Federal Regulations in order to provide benefits under the Vietnam Era GI Bill. The statutory provisions governing the Vietnam Era GI Bill are found in 38 U.S.C. chapter 34. Section 3462(e) states, "No educational assistance shall be afforded any eligible veterans under this chapter or chapter 36 of this title after December 31, 1989." Thus, if a Vietnam Era veteran who was unable to pursue a program of education under the Vietnam Era GI Bill due to a physical or mental disability, recovered from the disability to the point where he or she would be able to pursue that program in 1997, VA would be prohibited by 38 U.S.C. 3462(e) from paying educational assistance to that veteran.

Accordingly, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule.

#### **Paperwork Reduction Act of 1995**

Information collection and recordkeeping requirements associated with this final rule (38 CFR 21.3047) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0573. The regulation requires that a spouse or surviving spouse who wants an extension of the applicable time limit to use educational assistance provided under DEA must apply for it. Since VA would consider any communication from such an individual seeking this extension to be an application, there are no corresponding form numbers.

VA is not authorized to impose a penalty on persons for failure to comply

with information collection requirements which do not display a current OMB control number, if required.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.117)

#### **List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 28, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 21 (subparts C and F) is amended as set forth below.

#### **PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

##### **Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35**

1. The authority citation for subpart C continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3021, paragraph (l) is redesignated as paragraph (m); and new paragraph (l) is added, to read as follows:

##### **§ 21.3021 Definitions.**

\* \* \* \* \*

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

\* \* \* \* \*

3. In § 21.3046, paragraph (e) is removed.

4. Section 21.3047 is added, to read as follows:

##### **§ 21.3047 Extended period of eligibility due to physical or mental disability.**

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by § 21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless

the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.3046(c); and

(2) Must be on or before the ninetieth day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0573)

(Authority: 38 U.S.C. 3512(b))

### Subpart F—Education Loans

5. The authority citation for subpart F continues to read as follows:

**Authority:** 38 U.S.C. 501, 3537, 3698, 3699, unless otherwise noted.

6. In § 21.4501, paragraph (b)(1) is amended by removing “(d)” and adding, in its place, “(d), or § 21.3047”; paragraph (b)(2)(iv) is amended by removing “(d)” and adding, in its place, “(d), or § 21.3047”; paragraph (b)(2)(v)(A) is amended by removing “(d)” and adding, in its place, “(d), or § 21.3047”; paragraph (b)(2)(v)(B) is amended by removing “(d)” and adding, in its place, “(d), or § 21.3047”; paragraph (c)(1) is amended by removing “(d)” and adding, in its place “(d), or § 21.3047”; and paragraph (c)(3) is amended by removing “(d)” and adding, in its place, “(d), or § 21.3047”.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are

indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.