

**MODULE #2 VETERANS BENEFITS: GENERAL PROVISIONS; DEFINITIONS
PERIODS OF WAR**

DATE STARTED: _____ **LOCATION:** _____

SERVICE OFFICER/TRAINEE SIGNATURE: _____

TRAINER SIGNATURE: _____

DATE COMPLETED _____

I. Please rate the effectiveness of this training module.

Objective		Acceptable	Marginal	Unacceptable
Define & understand the jargon of our work	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Periods of Service	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Define & understand military service types and their impact on benefits.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Define dependent (spouse, widow, child, parent)	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Confidential nature of claims & certain medical records.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Inspection of records or disclosure of information to recognized individuals.	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			

MODULE # 2 CONTINUED

Objective		Acceptable	Marginal	Unacceptable
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
SUBJECTIVE EVALUATION				
		Good	Fair	Poor
1. Please rate the extent to which you met your personal objective for this module				
2. Rate the information provided in the Training Manual & other reference materials				
3. Please evaluate the physical environment where the training was held.				
4. Is there anything that we could have done to make this training better for you? (Please comment)				

Training Module 2

GENERAL PROVISIONS, DEFINITIONS & PERIODS OF WAR

Objective: To become familiar with the general provisions and definitions used in the context of those benefits administered by the U.S. Department of Veterans Affairs (VA). Also, become familiar with the various definitions of "wartime service" for purposes of different agencies. Additional definitions and more specific information are in the module for each specific benefit.

References:

Title 38, U.S. Code & 38 Code of Federal Regulations.
Public Law 107-103, The Veterans Education & Benefits Expansion Act of 2001
Public Law 108-183, The Veterans' Benefits Act of 2003
Health Insurance Portability and Accountability Act (HIPPA), as implemented by 45 C.F.R. Parts 160 & 164
VA Pamphlet: Federal Benefits for Veterans and Dependents.

Instructions: Study all of the reference materials available to become familiar with general provisions governing VA benefits, and the definitions of terms used in connection with adjudication of claims and awarding of benefits. Special attention should be given to the dates of various periods of war, and to distinguish between benefits that require wartime service from the ones that do not.

Summary: The Department of Veterans Affairs, its activities, organization, and the scope of the benefits it administers are all authorized under various statutes enacted by Congress. These laws are codified in Title 38 of the U.S. Code. Section 501 (and are further defined in 38 C.F.R.) and gives the Secretary of Veterans Affairs the authority to promulgate such regulations as necessary to administer the law.

DEFINITIONS

1. {Unless otherwise specified, when section or chapter is mentioned in this part, it is referencing Title 38, United States Code.}
 - a. Benefits. "Benefits" available to veterans and their dependents authorized by laws administered by VA (Department of Veterans Affairs).
 - b. Veteran. "Veteran" means person who served in the active military, naval, or air service, and who was discharged or released wherefrom under conditions other than dishonorable. (Sec. 101(2), 1301)
 - c. Fugitive Felon. A fugitive felon is defined as a person who is fleeing to avoid custody or confinement after conviction for an offense which is a felony under the laws of the place from which the person is fleeing, or for an attempt to commit such an offense which is a felony; and/or violating a condition of probation or parole imposed for committing a felony under Federal or State law. This includes high misdemeanors under any State law that treats felony offenses as high misdemeanors. (Sec. 101 (12)).

Training Module 2

- d. **Veteran of Any War.** "Veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war. (Sec. 101 (12))
- e. **Active Military, Naval, or Air Service.** "Active military, naval, or air service" includes active duty; any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty. (Sec. 101 (24))
- f. **Compensation.** "Compensation" means a monthly payment made to the veteran because of a service-connected disability or to a [surviving] spouse, child or dependent parent of a veteran because of a service-connected death occurring before January 1, 1957. (Sec. 101(13))
- g. **Dependency and Indemnity Compensation.** "Dependency and Indemnity Compensation" means a monthly payment made to a surviving spouse, child or parent because of a service-connected death occurring after December 31, 1956, or the election in the case of such a death occurring before January 1, 1957. (Sec. 101 (14))
- h. **Pension.** "Pension" is a monthly or (other periodic payment) payment to a wartime veteran because of service, age or (nonservice-connected disability), or to a surviving spouse or child of a veteran because of the nonservice-connected death of the veteran. (Sec. 101 (15))
- i. **Service Connected.** "Service connected" means with respect to disability or death, that such disability was incurred in or aggravated during service, or the death resulted from a disability incurred or aggravated in line of duty in the active military, naval, or air service. (Sec. 101 (16))
- j. **Nonservice Connected.** "Nonservice connected" means with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service. (Sec. 101 (17))
- k. **Preservation of Disability Ratings.** A disability, which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes, will not be reduced to less than such evaluation except upon a showing that such a rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes, which has been in force for 20 or more years, will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation. Service connection for any disability or death which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud, or it is clearly shown from military records that the person concerned did not have the requisite service of character of discharge. The 10-year period will be computed from the effective date of the finding of service connection to the effective date of the rating decision severing service connection. The protection afforded in this section extends to claims for dependency and

Training Module 2

indemnity compensation or death compensation. (Secs. 110, 1159, 5112; 38 CFR 3.951, 3.957)

- i. **Line of Duty.** Injury or disease incurred on active duty, including authorized leave, unless such injury or disease was the result of the veteran's own willful misconduct. (Sec. 105; 38 CFR 3.1, 3.301)
- m. **Willful Misconduct.** An act involving deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of, its probable consequences.

2. The periods recognized by VA as constituting wartime service (excluding those wars which began prior to 1900) are:

- **Mexican Border Period:** May 9, 1916 to April 5, 1917, if the veteran served in Mexico, on the borders thereof or the waters adjacent thereto.
- **World War I:** April 6, 1917 through November 11, 1918, inclusive. If the veteran served with U.S. forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran also served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.
- **World War II:** December 7, 1941 through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947 is considered World War II service.
- **Korean Conflict:** June 27, 1950 through January 31, 1955, inclusive.
- **Vietnam Era:** February 28, 1961 through May 7, 1975, inclusive, if the veteran served in Vietnam during that period. In all other cases, August 5, 1964 through May 7, 1975, inclusive.
- **Persian Gulf War:** August 2, 1990 through a (future) date to be prescribed by Presidential proclamation or law.

3. **ACTIVE DUTY.** Active duty means full-time service:

- a. In the Armed Forces. (Other than active duty for training.)
- b. Service as a cadet at the US Military, Air Force, or Coast Guard Academy; or as a midshipman at the U. S. Naval Academy.
- c. Travel time authorized to report for duty is included in active duty. (Sec. 101 (21))

Training Module 2

4. ACTIVE DUTY FOR TRAINING “Active duty for training” means

- a. Reservists on full-time duty for training purposes in the Armed Forces.
- b. Full-time duty for training purposes performed by a commissioned officer of the Reserve Corps of the Public Health service on or after July 29, 1945, or before that date under circumstances affording entitlement to full military benefits, or at any time for purposes of DIC (Dependency and Indemnity Compensation);
- c. Members of the National Guard or Air National Guard of any State, performing full-time training duty, under title 32, 316, 502, 503, 504, or 505, or the prior corresponding provisions of law;
- d. Annual training duty by a member of a Senior ROTC (Reserve officers’ Training Corps) program when the member is ordered to duty for the purpose of field training or a practice cruise for a period of not less than 4 weeks. A “senior” ROTC program is a 2- or 4-year program at the college or university level.
- e. Including travel to and from such duty (Sec. 101 (22));

5. INACTIVE DUTY TRAINING. “Inactive duty training” means

- a. Duty, other than full-time duty, prescribed for Reservists, including commissioned officers of the Reserve Corps of the Public Health Service by the Secretary concerned under 37 U.S.C. 206 or any other provision of law;
- b. Special additional duties authorized for Reservists including commissioned officers of the Reserve Corps of the Public Health Service, performed by them on “a voluntary” basis;
- c. Training other than active duty for training by a member of or applicant for membership in the Senior Reserve Officers’ Training Corps prescribed under chapter 103 of title 10, United States Code.
- d. Inactive duty training does not include work or study performed in connection with correspondence courses, attendance at an educational institution in an inactive status, or duty performed as a temporary member of the Coast Guard Reserve. (Sec. 101 (23))
- e. Travel time authorized to perform active duty for training or inactive duty for training or inactive duty training includes authorized travel to and from such duty. (Sec. 106 (e); Op. .C. 1-64).

6. RELATIONSHIP BY MARRIAGE

- a. Spouse. The term “spouse” means a person of the opposite sex whose marriage meets the requirements of subparagraph *b* below. (Sec. 101 (3), Public Law 92-540, 28 CFR 3.50 c 3.52)

Training Module 2

- b. **Marriage.** Means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the rights to benefits accrued. In order to prove relationship by marriage, proof of the dissolution of prior marriages, of either party, by death, divorce, or annulment is required. See subparagraph c below. Evidence in one of the following forms may be acceptable if the higher type evidence is not of record.
1. Certified copy or the public record or an abstract of the public record;
 2. Certified Copy of the church record;
 3. Official report from service department as to marriage which occurred during service;
 4. Affidavit of clergyman or magistrate who officiated;
 5. The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;
 6. Affidavits or certified statements of two or more eyewitnesses to the ceremony
 7. Any other secondary evidence, which reasonably supports a belief by VA that a valid marriage actually occurred. (38 CFR 3.50, 3.205)
- c. **Valid Marriage.** The legality of a marriage will be accepted on the basis of proof of marriage, either ceremonial or common law. In the absence of conflicting information, the claimant's certified statement concerning the date, place and circumstances of dissolution of any prior marriages may be accepted as establishing a valid marriage. When necessary, because of insufficient or conflicting information, proof of termination of a prior marriage will be shown by proof of death, or a certified copy or abstract of final decree of divorce, or annulment specifically citing the effects of the decree. In those instances when the claimant being assisted by a Veterans Benefits Counselor does not have the necessary evidence, he or she will send the request to the proper Custodian of Public Records for the document. (Sec. 103; 38 CFR 3.1 (j) , 3.205)
- d. **Surviving Spouse.** Means a person of the opposite sex who is a widow or widower at the time of the veteran's death, who lived with the veteran continuously to date of death except when there was a separation caused by the veteran without fault of the spouse. (38 CFR 3.50 c, 3.52)
- e. **Deemed Valid Marriage.** Where an attempted marriage of claimant to the veteran was invalid because of a legal impediment, the marriage will nevertheless be deemed valid if:
1. The marriage occurred one year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage, and
 2. The claimant entered into the marriage without knowledge of the impediment, and
 3. The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death, and
 4. No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death. (Sec. 103 (a); 38 CFR 3.52)

Training Module 2

- f. **Legal Impediment.** In addition to other evidence to prove the “marriage,” the claimant is required to submit a signed statement that he or she had no knowledge of an impediment to marriage to the veteran. His or her statement will be accepted as proof of the fact in the absence of information to the contrary. The Administrator’s Decision 979, April 2, 1962 provides for the possible recognition of a “common-law” marriage consummated in good faith in one of the several States that do not recognize the common law.
- g. **Continuos Cohabitation.** The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be met when the evidence show there was no separation due to the fault of the surviving spouse. Temporary separations, which occur including those caused through fault of either party, will not break the continuity of the cohabitation. If the evidence establishes that the separation was by mutual consent for purposes of convenience, health, business, or any other reason, which did not show intent on the part of the surviving spouse to desert the veteran-spouse, the continuity of the cohabitation, will not be considered broken. If the surviving spouse was separated from the veteran prior to his or her death, the Veterans Benefits Counselor will assist in the preparation of a statement. Use VA Form 21-4138, Statement in Support of Claim, because it contains the penalty clause. The statement must include all the following information.
1. All of the facts and circumstances leading up to and attending the separation
 2. Date of separation
 3. Spouse’s addresses, with dates, during the separation
 4. Places of residence of the veteran during the separation
 5. Whether or not there was any separation agreement entered into between the veteran and the spouse; if so, a certified copy of the agreement must be attached.
 6. Whether or not either the veteran or the spouse ever secured, or applied for a divorce
 7. Any other facts pertaining to the separation, efforts for reconciliation, communications, etc.
 8. Whether the surviving spouse has held himself or herself out as the spouse of anyone, that is, lived with anyone as man and wife, since the veteran’s death.
 9. The surviving spouse’s statement should be supported by affidavits or certified statements from two or more responsible persons, preferably disinterested, who must state their ages, and the facts to which they subscribe, relating facts only as they know them, not as they were told or as they understood. Hearsay evidence is worthless. The reason for subparagraphs (2), (3), and (4) above is that it may be necessary to require certification that a divorce was not obtained in any of the various jurisdictions or residence. (Sec. 101 (3); 38 CFR 3.53)
- h. **Common-Law Marriage.** Common-law marriage is an informal agreement by a man and woman, who are both legally free to contract a marriage, to live as man and wife. Once established in a jurisdiction that recognizes the validity of common-law marriage, the marriage is legal and binding and each party to the marriage assumes all of the responsibilities of marriage incident to the laws of any jurisdiction where the parties may reside thereafter. When applying for benefits based on a common-law

Training Module 2

marriage, the claimant should furnish VA Form 21-4170, Statement of Marital Relationship, and at least two supporting statements on VA Form 21-4171, Supporting Statement Regarding Marriage. The VA 21-4170 may be offensive to a surviving spouse who is requested to establish a common-law marriage when she or he alleges a ceremonial marriage, but cannot produce the necessary evidence to prove it. When a ceremonial marriage cannot be proved by the best evidence (the public record), it would be proper to ask for secondary proof of ceremonial marriage, such as statements from witnesses present at the ceremony. If there is a failure of this type of proof, the surviving spouse should then be asked for evidence of a "marriage agreement," using this euphemism for "common-law marriage," which would avoid the offensive or indelicate implication of the latter term. (M21-1, part III, par. 6.08)

7. REMARRIAGE OF SURVIVING SPOUSE

- a. **Remarriage.** Remarriage or inference of remarriage of a surviving spouse of a veteran is a permanent bar against receiving death pension benefits based on that veteran's services. It will also bar receipt of service connected death (DIC) unless the remarriage is dissolved by death or divorce; or in certain instances where the widow/widower remarries on or after age 57, in which case the surviving spouse is eligible to request restoration of DIC benefits. (38 C.F.R 3.55 and PL 108-183)
- b. **Void and Annulled Marriage.** The remarriage of the surviving spouse of a veteran shall not bar the furnishing of benefits to the surviving spouse of the veteran if the remarriage is void or has been annulled by a court with basic decree annulment authority unless VA determines that the annulment was secured through fraud by either party or by collusion. (Sec. 103; 38 CFR 3.55)
- c. **Annulment of Marriage.** A certified copy, or certified abstract of the decree of annulment is required. A decree will be accepted unless there is a reason to question the basic authority of the court to make annulment decree or there is evidence indicating that the annulment may have been obtained through fraud or collusion. (38 CFR 3.55, 3.207 (b); M21-1, part III, par. 6.15)
- d. **Court Decisions---Unremarried Surviving Spouse.** A decision given by a Federal court holding that a surviving spouse of a veteran has not remarried will be followed in determining eligibility for pension, compensation or DIC. (38 CFR 3.24)

Note: 38 CFR 3.55(a) (2) On or after January 1, 1971, remarriage of a surviving spouse terminated prior to November 1, 1990, or terminated by legal proceedings commenced prior to November 1, 1990, by an individual who, but for the remarriage would be considered the surviving spouse, shall not bar the furnishing of benefits to such surviving spouse provided that the marriage:

- (i) Has been terminated by death, or
- (ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by the surviving spouse or by collusion.

Training Module 2

8. RELATIONSHIP OF CHILD

- a. Child. Means an unmarried child of the veteran who is under the age of 18 years; who became permanently incapable of self-support before attaining age 18; or who between the ages of 18 and 23 is pursuing a course of instruction at an approved educational institution; and
 1. Who is a legitimate child or
 2. A legally adopted child, (38 CFR 3.87 c), or
 3. A stepchild who is a member of the veteran's household or was a member at the time of the veteran's death, or
 4. An illegitimate child, when acknowledged in writing by the veteran. Also if he has been judicially decreed to be the father of the child, or if otherwise shown by evidence satisfactory to VA to be the father of the child, or
 5. A child living in the veteran's household at the time of death, who is adopted by the surviving spouse within 2 years after the veteran's death. The child must not have been receiving regular support from any individual except the veteran and his or her spouse, or from any public or private welfare organization, which furnished assistance for children. Payment of benefits on behalf of such child will be effective from the date of adoption. (Sec. 101 (4), 38 CFR 3.57 c)
- b. Legitimate Child. When necessary to prove legitimacy of a child, prove legality of marriage of the mother or father of the child to the veteran, or show it is legitimate by State laws together with birth certificate or other evidence outlined under paragraph 15 below.
- c. Illegitimate Child. As to the mother, proof of birth is all that is required; as to the father, proof of relationship will be as follows:
 1. Acknowledgment in writing, signed by him
 2. Evidence identifying him as the child's father by judicial decree ordering him to contribute to the child's support or for any other purpose;
 3. Any secondary evidence which supports relationship, such as:
 - a. A certified copy of the public record of birth or church record of baptism showing that the veteran was the informant and was named the father of the child
 - b. Statements of disinterested persons who know that the veteran accepted the child as his.
 - c. Information from service departments or public records such as school or welfare agencies, which show that with his knowledge the veteran was named as the father of the child. (38 CFR 3.210 (b))
- d. Adopted Child. A copy of the decree of adoption or a copy of the adoption placement agreement. (38 CFR 3.210 c)
- e. Child Adopted by Spouse After Death of Veteran. A statement of the adoptive parent or custodian of the child will also be required to show that the child was a member of the veteran's household at the date of death, was adopted by the

Training Module 2

veteran's spouse within 2 years after the veteran's death, and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support from any person other than the veteran, his or her spouse, or from any public or private welfare organization which furnishes assistance to children. (38 CFR 3.210)

- f. Stepchild. Evidence of relationship will consist of proof of birth; evidence of marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran's household, or was a member of a deceased veteran's household at the time of death. (38 CFR 3.210)
- g. Children of surviving Spouses. A "marriage deemed valid" extends all benefits to all children of the surviving spouse as described in section 101 (4) except for purposes of ARH NSLI, section 722 (b) (Op. G.C. 3-62).
- h. Age. For proof of age see paragraph 11 below.

9. RELATIONSHIP OF PARENTS

Parents. Means a father, a mother, a father through adoption, a mother through adoption, or

- a. A person who stood in the relationship of a parent to the veteran for not less than 1 year at any time before entry into active service; or
- b. If two persons stood in the relationship of a father or a mother for 1 year or more, the person who last stood in that relationship before the veteran's last entry into service.

10. PROOF OF RELATIONSHIP. (M21-1, part III, ch. 6 and 38 CFR 3.201 through 3.213)

Proof of relationship is required in all cases. The acceptable forms of evidence are stated in 38 CFR 3.205 and 3.209. Preference is given to certified copies or abstracts from public records. When these are unavailable, alternative evidence forms listed in the regulations may be used.

11. PROOF OF AGE

- a. Normally, the veteran's or surviving spouse's statement as to age and date of birth will be accepted when in agreement with other records.
- b. The following types of evidence may be used when necessary to prove age or date of birth. The evidence is listed in the order preferred: (38 CFR 3.202, 3.204, 3.208, 3.209)
 - 1. A copy or abstract of the public record of birth. Records established more than 4 years after birth will be acceptable if not inconsistent with material of record in VA.
 - 2. Copy or church record of baptism. Records established more than 4 years after birth must be consistent with material of record in VA, which include at least one reference to age or relationship which was made at a time when such reference was not essential to establishing entitlement to the benefit claimed.

Training Module 2

3. Official report from service department as to birth which occurred during service.
 4. Affidavit or certified statement of the physician or midwife in attendance at birth
 5. Copy from Bible or other family records, certified by a notary public. Copy the facts as found including the condition of the entries, the record itself, and the year in which the book of record was printed.
 6. Affidavits or certified statements of two or more persons, preferably disinterested, who state the age, name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents, naming them and stating their source of knowledge.
 7. Other evidence, such as census records, baptismal or hospital records, insurance policies, school, employment and immigration or naturalization records. Naturalization records may not be duplicated; therefore, the facts may be copied and authenticated with VA Form 4505.
- c. To secure birth certificates of children born on military bases located in foreign countries, write the Passport Office, Department of State, Washington, D. C. 20524

12. PROOF OF DEATH

- a. Preferred evidence to prove death: (38 CFR 3.211)
 1. A copy of the public record, or when not readily available, a certified copy of the coroner's report of death which properly identifies the person.
 2. When death occurs in a medical facility of the United States Government, a certificate signed by a medical officer is acceptable.
 3. The official report of death of a member of the Uniformed Services from the Secretary concerned needs no further verification.
 4. When death occurs abroad, acceptable evidence may be obtained by:
 - a. A United States Consular report of death bearing the signature and seal of the United State Consul.
 - b. A copy of the public record of death authenticated by a United States Consul or other agency of the State Department.
(M-21-1, part III, par. 6.07f)
 - c. An official report of death from the head of the department concerned, when the deceased person at time of death was a civilian employee of that department.
- b. If the above-described evidence cannot be submitted, the reason must be stated and the fact of death may be established by affidavits of persons who have personal knowledge of the fact of death, have viewed the body of the deceased, know it to be the body of the person whose death is being established, giving all the facts and circumstances concerning the death, place, date, time and cause. When it is indicated that the veteran died under circumstances, which preclude recovery or identification, the fact of death must be established by the best evidence, which from the nature of the case, must be supposed to exist. In the absence of evidence to the