§ 21.7280

(a) Overview. VA will pay a death benefit under 38 U.S.C. ch. 30 when an individual’s death meets the criteria of this section; the individual is survived by someone described in this section; and the amount of educational assistance paid or payable to the individual is less than the amount reduced from the individual’s basic pay.

(b) Necessary criteria for death benefit. VA may pay a death benefit under 38 U.S.C. ch. 30 only if—

(1) The individual either—

(i) Dies while on active duty, or

(ii) Dies after October 28, 1992, and his or her date of death is within one year after the date of his or her last discharge or release from active duty; and

(2) The death of the individual is service connected. In determining if the death is service connected, VA will apply the provisions of §3.312 of this chapter; and

(3) Either—

(i) At the time of the individual’s death he or she is entitled to basic educational assistance through having met the eligibility requirements of §21.7042, or

(ii) At the time of the individual’s death he or she is on active duty with the Armed Forces and but for the minimum service requirements of §21.7042(a)(2) or §21.7042(b)(3) or (4) or the educational requirements of §21.7042(a)(3) or §21.7042(b)(2) or both would be entitled to basic educational assistance.
assistance through having met the eligibility requirements of §21.7042.

(Authority: 38 U.S.C. 3017(a))

(c) Payee. (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.
    (i) The beneficiary or beneficiaries designated by the individual under the individual’s Servicemen’s Group Life Insurance Policy,
    (ii) The surviving spouse of the individual,
    (iii) The surviving child or children of the individual, in equal shares,
    (iv) The surviving parent or parents of the individual in equal shares.
(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.

(Authority: 38 U.S.C. 3017(a)(2); Pub. L. 100–689) (July 1, 1985)

(d) Amount of death benefit. (1) The amount of any payment made under this section shall be equal to—
    (i) The amount reduced from the individual’s basic pay as provided in §21.7042(f) less—
    (ii) The total of—
        (A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and
        (B) The amount of accrued benefits paid or payable with respect to the individual.
(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.

(Authority: 38 U.S.C. 511)

§ 21.7302 Finality of decisions.

(a) Agency decisions generally are binding. The decision of a VA facility of original jurisdiction on which an action is based—
    (1) Will be final,
    (2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and
    (3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in §21.7303 of this part. (See §§19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 511)

(b) Decisions of an activity within VA. Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 511)

(c) Character of discharge determinations. (1) A determination of the character of a veteran’s discharge made by a competent military or naval authority or by the Coast Guard is binding upon VA.

(2) Any determination of the character of a veteran’s discharge made by VA in connection with the veteran’s eligibility for a benefit other than educational assistance under 38 U.S.C.