

18. In § 4022.63:

- a. Redesignate paragraph (c)(1) as paragraph (c)(1)(i) and redesignate paragraph (c)(2) as paragraph (c)(1)(ii).
- b. Redesignate the introductory text of paragraph (c) as paragraph (c)(1) and add a new heading “*In general.*”
- c. In paragraph (e), amend Example 1 by adding a new paragraph at the end: *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, the methodology would be the same, but “bankruptcy filing date” would be substituted for “proposed termination date” each place that “proposed termination date” appears in the example, and the numbers would change accordingly.
- d. Add new paragraphs (b)(3) and (c)(2) to read as follows:

§ 4022.63 Estimated title IV benefits.

* * * * *

(b)* * *

(3) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “proposed termination date” in the first sentence of paragraph (b)(2) of this section.

(c) *In general.* * * *

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “proposed termination date” each place that “proposed termination date” appears in paragraph (c)(1) of this section.

* * * * *

19. In § 4022.82:

- a. Amend paragraph (a)(1) by redesignating the second sentence as paragraph (a)(1)(i), and add a new heading “*Non-PPA 2006 bankruptcy termination*” and by redesignating the third sentence as paragraph (a)(1)(iii) and add a new heading “*Facts and circumstances.*”
- b. Amend the newly redesignated (a)(1)(iii) by removing “The PBGC may, however, utilize” and adding in its place “PBGC may use”.
- c. Add new paragraph (a)(1)(ii) to read as follows:

§ 4022.82 Method of recoupment.

(a) * * *

(1) * * *

(i) *Non-PPA 2006 bankruptcy termination.****

(ii) *PPA 2006 bankruptcy termination.* PBGC will determine the amount of benefit payable with respect to the participant under title IV of ERISA taking into account the limitations in sections 4022(g) and 4044(e) (and corresponding provisions of these regulations), and will determine the present value of that amount as of the

termination date, using PBGC interest rates and factors in effect on the termination date.

(iii) *Facts and circumstances.* * * *

20. In Appendix D to Part 4022, amend the introductory text by removing “§ 4022.22(b)” and adding in its place “§ 4022.22(a)(2)”, and by replacing “:” with a “.”, and by adding a sentence at the end to read as follows: “In a PPA 2006 bankruptcy termination, the applicable year is the calendar year in which the bankruptcy filing date occurred.”

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

21. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

22. In the Note before subpart A: a. In the second sentence, remove “in the PBGC’s” and add in its place “in other provisions of the PBGC’s”.

b. After the second sentence, add a sentence to read as follows: “In addition, the Pension Protection Act of 2006 has made a number of significant changes, including changes to the treatment in priority category 4 of benefits of owners, and changes to the valuation of PBGC recoveries of liabilities under section 4062(c) of ERISA.”

23. In § 4044.2: a. Amend paragraph (a) by removing “annuity, basic-type benefit” and adding in its place “annuity, bankruptcy filing date, basic-type benefit” and by removing “plan administrator, single-employer plan” and adding in its place “plan administrator, PPA 2006 bankruptcy termination, single-employer plan”.

b. In paragraph (b), amend the definition of “valuation date” by removing “date of termination” and adding in its place “termination date”.

24. In § 4044.10(b), add the phrase “, but, in a PPA 2006 bankruptcy termination, subject to the limitations in sections 4022(g) and 4044(e) of ERISA (and corresponding provisions of these regulations)”, at the end of the last sentence.

25. In § 4044.13, add new paragraph (c) to read as follows:

§ 4044.13 Priority category 3 benefits.

* * * * *

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” and “date of the plan termination” each place that

“termination date” and “date of the plan termination” appear in paragraphs (a) and (b) of this section. In paragraph (b)(5), “the bankruptcy filing date” is substituted for “termination” in the phrase “during the fourth and fifth years preceding termination.” Example: A plan provides for normal retirement at age 65 and has only one early retirement benefit: a subsidized early retirement benefit for participants who terminate employment on or after age 60 with 20 years of service. These plan provisions have been unchanged since 1990. The contributing sponsor of the plan files a bankruptcy petition in June 2008, and the plan terminates during the bankruptcy with a termination date in September 2010. A participant retired in July 2007, at which time he was age 60 and had 20 years of service, and began receiving the subsidized early retirement benefit. The participant has no benefit in priority category 3, because he was not eligible to retire three or more years before the June 2008 bankruptcy filing date.

26. Amend § 4014.14 by removing “basic-type benefits that do not exceed the guarantee limits set forth in subpart B of part 4022 of this chapter” and adding in its place “guaranteed benefits”.

Issued in Washington, DC, this day of June, 2008.

Vincent K. Snowbarger,
Acting Director, Pension Benefit Guaranty Corporation.
[FR Doc. E8-14813 Filed 6-30-08; 8:45 am]
BILLING CODE 7709-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AM91

Vocational Rehabilitation and Employment Program—Duty To Assist

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: This document proposes to amend the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA) concerning VA’s responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational rehabilitation benefits and services, and regarding applicable time periods. VA’s duty to assist claimants in substantiating their claims for benefits is expanded by The Veterans Claims Assistance Act of 2000, and is

incorporated in this rulemaking. Specifically, upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help the claimant obtain the evidence necessary to substantiate the claim. In addition, VA proposes to make changes to improve readability and other clarifying changes that are nonsubstantive.

DATES: Comments must be received on or before September 2, 2008.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM91—Vocational Rehabilitation and Employment Program—Duty to Assist." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll free phone number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-9613.

SUPPLEMENTARY INFORMATION: In 38 CFR part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, we propose to amend VA's regulations concerning claims for vocational rehabilitation and employment benefits and services, by amending 38 CFR 21.32 and adding § 21.33 with regard to VA's duty to assist claimants and applicable time limits. Those provisions would apply to claimants for such benefits and services under 38 U.S.C. chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities and 38 U.S.C. chapter 18, Benefits for Children of Vietnam Veterans and Certain Other Veterans.

The Veterans Claims Assistance Act of 2000 (Pub. L. 106-475) (VCAA), enacted November 9, 2000, included provisions amending 38 U.S.C. 5102

and 5103 and adding new sections 38 U.S.C. 5100 and 5103A, pertaining to VA's duty to assist claimants in obtaining evidence in support of claims for benefits. Upon receipt of a substantially complete application for benefits, VA's duty under the VCAA is to make reasonable efforts to help the claimant obtain the evidence necessary to substantiate the claim. This effort is commonly referred to as the "duty to assist." VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. Similarly, VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Finally, VA will not consider the receipt of a notice of disagreement relating to a claim as an "application" for benefits that would trigger its duty to assist. Section 701 of the Veterans Benefits Act of 2003 (Pub. L. 108-183) further amended 38 U.S.C. 5102 and 5103 regarding time limitations relevant to claimant's applications. Public Law 108-183 allows VA to decide a claim before the one-year time limit for submitting evidence expires.

Under 38 U.S.C. 5103A(e), VA is directed to prescribe regulations to carry out the provisions of section 5103A. In the *Federal Register* of August 29, 2001 (66 FR 45620), VA issued a final rule amending 38 CFR part 3, subpart A, to carry out those and other provisions of the VCAA with respect to claims for benefits that are governed by 38 CFR part 3 (including compensation, pension, dependency and indemnity compensation, burial benefits, monetary benefits ancillary to those benefits, and special benefits) (66 FR at 45629).

In the *Federal Register* of April 30, 2008 (73 FR 23353), VA published a final rule amending provisions in 38 CFR 3.159 that were included in those 2001 regulations. The final rule was based on the rationale in its preamble and in the preamble to a proposed rule that VA published on October 31, 2006 (71 FR 63732). Those amendments were intended, in part, to clarify when VA has no duty to provide notice under 38 U.S.C. 5103(a) "of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate" a claim for benefits. In particular, that rule included provisions that were intended to clarify that VA's receipt of a notice of disagreement (the means to initiate an

appeal of a decision on a claim to the Board of Veterans' Appeals, under 38 U.S.C. 7105 and 38 CFR 20.200) does not trigger VA's duty to provide that notice. (See 73 FR 23353-23354, 23356; 71 FR 63732-63734.)

In addition, in the *Federal Register* of April 5, 2007 (72 FR 16962), VA published a final rule that included provisions concerning, among other matters, VA's duty to assist claimants for VA education benefits. The final rule was based on the rationale in its preamble and in the preamble to a proposed rule that VA published in the *Federal Register* of February 22, 2006 (71 FR 9196). The final rule's provisions concerning VA's duty to assist claimants for VA education benefits, which were adopted without change from those in the proposed rule, are contained in 38 CFR 21.1031 and 21.1032.

We propose to amend § 21.32 and to add § 21.33 to describe VA's responsibilities for notifying the claimant of necessary information or evidence when a claim for vocational rehabilitation and employment benefits is filed, the time periods for response by the claimant or in which VA may take action in adjudicating the claim, and VA's duty to assist claimants in obtaining evidence. In particular, we are proposing that VA may decide the claim if the claimant has not responded to that notice within 30 days from the date of the notice, as set forth in proposed § 21.32(d). Under that paragraph, if the claimant subsequently submits the specified evidence or information within one year of VA's request, VA must readjudicate the claim. We believe that 30 days is a reasonable time period for these claimants to respond. It is specifically supported by our experience in administering VA's vocational rehabilitation programs, and is the same time for response provided in other circumstances under those programs. A claimant may delay VA action beyond the 30 days by responding with a request that VA wait beyond the 30-day period while the claimant attempts to gather evidence. The proposed 30-day time period also is based on administrative concerns, and is intended to assure that a lack of response does not unnecessarily delay a VA decision on the claim.

The proposed rule states that, for purposes of 38 CFR 21.32 and 21.33, the term "application" does not include a notice of disagreement. This is consistent with the provisions of 38 CFR 3.159(b)(3) as added, effective May 30, 2008, by the April 30, 2008, final rule (73 FR 23353, 23356), and the accompanying rationale published by VA in that rule's preamble (73 FR

23353–23354) and in the preamble to the corresponding proposed rule (71 FR 63732–63734).

The proposed changes to § 21.32 are also intended to improve readability, including by removing provisions in current § 21.32 that we believe are unnecessary, and to make other clarifying changes that are nonsubstantive.

These proposed rules would apply to the vocational rehabilitation programs administered by the Secretary and would apply to claims for vocational rehabilitation benefits and services filed on or after the effective date of the final rule.

Finally, we propose to add § 21.8015 to Subpart M of part 21 to clarify VA's responsibilities to claimants who apply for vocational rehabilitation benefits and services under that subpart. The proposed section would provide that §§ 21.32 and 21.33, which are located in subpart A, would apply also to claims for such benefits and services under subpart M.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would 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 proposed amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs that would be affected by this proposed rule are 64.116, Vocational Rehabilitation for Disabled Veterans, and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Defects.

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: March 21, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 21 (subparts A and M) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

2. The Subpart A heading is revised as set forth above.

3. Revise § 21.32 to read as follows:

§ 21.32 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action.

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA has a duty to notify claimants of necessary information or evidence.* Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the claimed benefit, when VA receives a complete or substantially complete application for vocational rehabilitation benefits and services provided under this subpart or subpart M of this part VA will:

(1) Notify the claimant of any information and evidence that is necessary to substantiate the claim;

(2) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant; and

(3) Inform the claimant of the time limit, as provided in paragraph (c) of this section, for responding to VA's notification, and of actions, as provided in paragraph (d) of this section, that VA may take to decide the claim if the claimant does not respond to such notification within 30 days.

(b) *Definitions for purposes of §§ 21.32 and 21.33.* For purposes of this section and § 21.33:

(1) The term *application* does not include a notice of disagreement.

(2) The term *notification* means the notice described in paragraph (a) of this section.

(3) The term *substantially complete application* means, for an individual's first application for vocational

rehabilitation benefits and services administered by VA, an application containing:

- (i) The claimant's name;
- (ii) His or her relationship to the veteran, if applicable;
- (iii) Sufficient information for VA to verify the claimed service, if applicable; and
- (iv) The benefit claimed.

(4) The term *information* means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending.

(c) *Time limit.* Any information and evidence described in the notification as information and evidence that the claimant is to provide must be received by VA within one year from the date of the notification. If VA does not receive the information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(d) *Actions VA may take after 30 days if no response from claimant.* If the claimant has not responded to the notification within 30 days, VA may decide the claim before the expiration of the one-year period, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence specified in the notification within one year of the date of the notification, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award of vocational rehabilitation benefits and services shall take effect as if the prior decision by VA on the claim had not been made.

(e) *Incomplete applications.* If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot pay or provide any benefits based on that application.

(f) *Who VA will notify.* For the purpose of this section, when VA seeks to notify a claimant, it will provide such notice to:

- (1) The claimant;
- (2) His or her fiduciary, if any; and
- (3) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

4. Immediately after § 21.32 and prior to the cross-reference, add § 21.33, to read as follows:

§ 21.33 VA has a duty to assist claimants in obtaining evidence.

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.* (1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for vocational rehabilitation benefits and services under this subpart or subpart M of this part, VA will:

- (i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and
- (ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests.

(Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.* (1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

- (i) State or local governments;
- (ii) Private medical care providers;
- (iii) Current or former employers; and
- (iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

- (i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.

(ii) If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including:

- (i) The person, company, agency, or other custodian holding the records;

(ii) The approximate time frame covered by the records; and

(iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A)

(c) *Obtaining records in the custody of a Federal department or agency.* (1) Subject to paragraphs (c)(2) through (c)(4) of this section, VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

- (i) Military records;
- (ii) Medical and other records from VA medical facilities;
- (iii) Records from non-VA facilities providing examination or treatment at VA expense; and
- (iv) Records from other Federal agencies.

(2) VA will cease its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including:

- (i) The custodian or agency holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the

claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit;

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law; and

(4) The claimant's lack of cooperation in providing or requesting information or evidence necessary to substantiate the claim.

(Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.* (1) VA will notify the claimant either orally or in writing when VA:

(i) Has made reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or

that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a written record of any oral notice conveyed under this paragraph to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA

is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103(a), 5103A)

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

5. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

6. Add § 21.8015 to read as follows:

§ 21.8015 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence.

The provisions of §§ 21.32 and 21.33 of subpart A of this part also apply to claims for benefits and services under this subpart.

[FR Doc. E8-14823 Filed 6-30-08; 8:45 am]

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