## Section B. Forfeiture Discontinuance Provisions

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | General Information on Forfeiture of Benefits |
| 2 | Handling Forfeiture of Benefits |

#### 1. General Information on Forfeiture of Benefits

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| Introduction | This topic contains general information on forfeiture of benefits, including information on   * when forfeiture of benefits occurs * definition of a ***foreign case*** * activities that result in the automatic forfeiture of benefits * entitlement to benefits based on subsequent service, and * presidential pardon petitions. |

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| a. When Forfeiture of Benefits Occurs | Forfeiture of benefits may be declared *after* September 1, 1959, for fraud or treasonable acts ***only*** in   * foreign cases, or * cases in which the act was committed in the Republic of the Philippines.   ***Reference***: For more information on fraud and treasonable acts, see   * [38 CFR 3.901](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1901&rgn=div8), and * [38 CFR 3.902](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1902&rgn=div8). |

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| b. Definition: Foreign Case | A ***foreign case*** is a case in which the beneficiary   * was ***not*** residing in a State when the fraudulent or treasonable act or acts occurred, or * ceased to be a resident of or domiciled in a State before the expiration of the period during which criminal prosecution could be instituted.   ***Note***: [38 CFR 3.1(i)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_11&rgn=div8) defines “State” for Department of Veterans Affairs (VA) purposes. |

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| c. Activities That Result in the Automatic Forfeiture of Benefits | The table below shows the activities that would result in the automatic forfeiture of benefits depending on when the claim was filed. |

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| If the claim was filed ... | Then the beneficiary would forfeit benefits upon conviction of ... |
| *before* December 17, 2003 | any of the subversive activities specified in [38 CFR 3.903(a)(1), (3), (4), or (5)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1903&rgn=div8). |
| *on or after* December 17, 2003 | * any of the subversive activities specified in [38 CFR 3.903(a)(1), (2), (3), (4), or (5)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1903&rgn=div8) * prohibited activities involving * biological weapons * chemical weapons, or * nuclear materials * genocide * use of certain weapons of mass destruction, and * acts of terrorism transcending national boundaries. |

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| d. Entitlement to Benefits Based on Subsequent Service | Forfeiture of benefits based on one period of service *does not* affect entitlement to benefits based on a period of service beginning ***after*** the offense causing the forfeiture.  ***Important***: Process a claim of this type based on the nonforfeiture period of service *only*.  ***Reference***: For information on forfeiture of benefits based on one period of service, see [38 CFR 3.900(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ab9221668b09670f06f3e4ce1f8fbb43&mc=true&node=se38.1.3_1900&rgn=div8). |

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| e. Presidential Pardon Petitions | Persons whose benefits have been forfeited may apply through the Department of Justice (DOJ) for a pardon from the President of the United States.  ***Important***: The effective date of the resumption of benefits based on a presidential pardon (after discontinuation based on forfeiture) is the date of the pardon.  ***Reference***: For more information on the resumption of benefits based on a presidential pardon, see   * [*Ricafort v. Nicholson*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm), 21 Vet.App. 198 (2007), and * [38 CFR 3.669(d)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=ab9221668b09670f06f3e4ce1f8fbb43&mc=true&node=se38.1.3_1669&rgn=div8). |

#### 2. Handling Forfeiture of Benefits

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| Introduction | This topic describes the processes for handling forfeiture of benefits, including   * handling forfeiture of benefits based on fraud or treasonable acts * submitting cases of forfeiture based on fraud or treasonable acts to Compensation Service and Pension and Fiduciary (P&F) Service * handling forfeiture of benefits based on claimant’s subversive activity under [38 CFR 3.903](http://www.ecfr.gov/cgi-bin/text-idx?SID=ab9221668b09670f06f3e4ce1f8fbb43&mc=true&node=se38.1.3_1903&rgn=div8) * handling the jurisdiction of the claims folder in cases invoking forfeiture * resuming payments in cases with non-forfeiture determinations * handling appeals of forfeiture decisions, and * processing apportionments in forfeiture cases. |

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| a. Handling Forfeiture of Benefits Based on Fraud or Treasonable Acts | The table below   * describes the stages in the process for handling forfeiture of benefits based on fraud or treasonable acts, and * indicates the activity responsible for each stage. |

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| Stage | Description |
| 1 | The development activity   * determines the credibility of evidence submitted in connection with all claims, and * develops for sufficient evidence to establish the probability that the information submitted in connection with a claim is * false or fraudulent, and * material to the question of eligibility for the particular benefit.   ***Note***: The development activity is also responsible for reviewing evidence developed by field examination. |
| 2 | The development and/or authorization activity prepares a proposed decision if the evidence presented indicates forfeiture. The decision should include   * the specific charges against the person * a detailed statement of the evidence supporting the charges, subject to regulatory limitations on disclosure of information * citation and discussion of the applicable statute(s), and * notification of * the right to submit a statement or evidence within 60 days, either to rebut the charges or to explain the person’s position, and * the right to a hearing within 60 days, with representation by counsel of the person’s own choosing. |
| 3 | The development and/or authorization activity submits the proposed decision to   * an authorizer for concurrence, and * the Veterans Service Center Manager (VSCM) or Pension Maintenance Center Manager (PMCM) or his/her supervisory designee for approval. |
| 4 | The VSCM or PMCM approves or rejects the proposed decision. |
| 5 | The development and/or authorization activity   * refers the claims folder and proposed decision to the Regional Counsel, and * establishes a suspense date to trigger the review of the status of the Regional Counsel referral. |
| 6 | The Regional Counsel   * furnishes the claimant with due process as provided in [38 CFR 3.905](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1905&rgn=div8), and * returns the claims folder to the regional office (RO). |
| 7 | At the end of the 60-day due process period, if the Regional Counsel still recommends forfeiture, the development and/or authorization activity   * prepares a final administrative decision, and * submits the decision to * an authorizerfor concurrence, and * the VSCM or PMCM or his/her designee for approval. |
| 8 | The VSCM, PMCM, or designee approves final decision. |
| 9 | The authorization activity refers the claims folder and final decision to the Regional Counsel to determine whether or not he/she will submit the case to Compensation Service (21C) or Pension and Fiduciary (P&F) Service (21PF) for consideration of forfeiture. |
| 10 | The Regional Counsel determines whether or not he/she will submit the case to Compensation Service or P&F Service for consideration of forfeiture.   * If *yes*, go to M21-1, Part III, Subpart vi, 5.B.2.b. * If *no*, the Regional Counsel returns the case to the authorization activity by memorandum setting forth the basis for the decision. |
| 11 | The authorization activity   * takes action to suspend benefits based on the evidence of record, or * advises the beneficiary that the case is not being submitted to Compensation Service or P&F Service. |

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| ***Note***: In the Manila RO, the title Regional Counsel also includes the VSCM because the VSCM in the Manila RO performs the Regional Counsel functions for forfeiture cases under jurisdiction of that office.  ***References***: For more information on   * transferring claims folders, see M21-1, Part III, Subpart ii, Chapter 5, and * jurisdiction, see [38 CFR 3.905](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1905&rgn=div8). |

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| b. Submitting Cases of Forfeiture Based on Fraud or Treasonable Acts to Compensation Service and P&F Service | The table below describes the process for submitting cases of forfeiture of benefits based on fraud, fraudulent evidence, or treasonable acts to the Compensation Service or P&F Service for consideration. |

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| Stage | Description |
| 1 | The Regional Counsel notifies the RO that he/she is submitting the case to Compensation Service or P&F Service for consideration of forfeiture under the circumstances outlined in [38 CFR 3.901](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1901&rgn=div8) or [38 CFR 3.902](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1902&rgn=div8).  ***Note***: If the authorization activity has already suspended payments and furnished a notice of proposed adverse action and final notification to the beneficiary before referring the case to the Regional Counsel, no further action is required. |
| 2 | The authorization activity   * suspends payments effective the date of last payment * furnishes final notification to the beneficiary, and * returns the claims folder to the Regional Counsel to submit to Compensation Service or P&F Service. |
| 3 | The Regional Counsel   * prepares the submission letter to Compensation Service or P&F Service for consideration of forfeiture under the circumstances outlined in [38 CFR 3.901](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1901&rgn=div8) or [38 CFR 3.902](http://www.ecfr.gov/cgi-bin/text-idx?SID=ead11842f0ffe0946cd4e115c0027a29&mc=true&node=se38.1.3_1902&rgn=div8), and * notifies the RO when the claims folder is ready for transfer to Compensation Service or P&F Service |
| 4 | The development and/or authorization activity transfers the claims folder to Compensation Service or P&F Service.  For electronic claims folders (eFolders), the VSR ***must*** send notification via e-mail to either Compensation Service or to P&F Service. The mailbox for   * Compensation Service is [VAVBAWAS/CO/21](mailto:21.VBACO@va.gov), and * P&F Service is [VAVBAWAS/CO/Pension & Fiduciary Svc](mailto:Pension&Fiduciary.VBACO@va.gov).   ***Important***: The period behind “Svc” must be included when addressing the e-mail to P&F Service.  ***Reference***: For more information on transferring claims folders, see M21-1, Part III, Subpart ii, 5. |
| 5 | The Director of Compensation Service, the Director of P&F Service, or designated staff officials within these services   * determine whether or not benefits will be forfeited * notify the Regional Counsel of the determination, and * return the case to the RO.   ***References***: For the   * process for handling the jurisdiction of the claims folder in cases in which Compensation Service or P&F Service declares forfeiture, see M21-1, Part III, Subpart vi, 5.B.2.d, and * procedure for resuming payments when Compensation Service or P&F Service does not declare forfeiture, see M21-1, Part III, Subpart vi, 5.B.2.e. |

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| c. Handling Forfeiture of Benefits Based on Claimant’s Subversive Activity Under 38 CFR 3.903 | The Attorney General, Secretary of Defense, or Secretary of Treasury notifies VA when a person is indicted or convicted of subversive activity.  After notification of   * an indictment, suspend payments pending disposition of the criminal proceedings, and * a conviction, the Regional Counsel forwards the case to Compensation Service or P&F Service for automatic forfeiture.   ***Important***: No other person will be entitled to receive any benefits due to the individual’s conviction for subversive activities. |

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| d. Handling the Jurisdiction of the Claims Folder in Cases Invoking Forfeiture | Compensation Service or P&F Service refers cases to the RO identified in M21-1, Part III, Subpart ii, 5.A.1 as having jurisdiction over the beneficiary’s foreign residence. The RO will discontinue benefits under [38 CFR 3.669](http://www.ecfr.gov/cgi-bin/text-idx?SID=ab9221668b09670f06f3e4ce1f8fbb43&mc=true&node=se38.1.3_1669&rgn=div8).  ***Note***: The Manila RO discontinues benefits for cases under its jurisdiction. |

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| e. Resuming Payments in Cases With Non-Forfeiture Determinations | Resume payments from the date of last payment under [38 CFR 3.669](http://www.ecfr.gov/cgi-bin/text-idx?SID=ab9221668b09670f06f3e4ce1f8fbb43&mc=true&node=se38.1.3_1669&rgn=div8), if benefits are otherwise in order if     * Compensation Service or P&F Service returns the claims folder and the Regional Counsel provides notification that no forfeiture was declared, or * Regional Counsel provides notification that the beneficiary was acquitted of subversive activities. |

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| f. Handling Appeals of Forfeiture Decisions | When a notice of disagreement (NOD) is timely filed, forward the following to Compensation Service or P&F Service   * the NOD, and * any material submitted with it.   ***Result***: Compensation Service or P&F Service prepares the statement of the case (SOC). |

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| g. Processing Apportionments in Forfeiture Cases | Use the table below to process apportionments when a forfeiture of benefits is invoked. |

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| If forfeiture was invoked … | Then … |
| ***before*** September 2, 1959 | continue apportionments in these cases as long as the dependents remain entitled.  The amount payable to the dependents is the lesser of   * the applicable survivors benefit payable, which is either * death compensation or Dependency and Indemnity Compensation (DIC), if the Veteran was receiving compensation, or * Survivors Pension, if the Veteran was receiving non-service-connected (NSC) disability pension, or * amount of compensation or pension being paid the Veteran at the time of the forfeiture.   ***Important***: Do ***not***pay benefits to or for any person who participated in the fraud or treasonable act causing the forfeiture. |
| ***after*** September 1, 1959 | do ***not*** make apportionment to any dependents. |