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**CHAPTER 28. CANCELLATION, FRAUD OR FORFEITURE**

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**28.01 GENERAL**

a. A cancellation is the action taken to invalidate an insurance contract or to nullify a reinstatement or a contract change, such as conversion, renewal, or change of plan.

b. Authorizations for cancellation, fraud or forfeiture actions are provided by law and VA regulations, as follows:

1. Statutes:

· USGLI (United States Government Life Insurance) 38 U.S.C. 1954

· NSLI (National Service Life Insurance) 38 U.S.C. 1910 and 1911

1. Regulations:

· USGLI (United States Government Life Insurance) 38 CFR §6.3

· NSLI (National Service Life Insurance) 38 CFR §8.29

**28.02 DECISION OF FRAUD**

1. If, upon application for insurance, reinstatement, exchange, conversion of term insurance, or change of plan but before any monies are paid in reliance on said application, it is determined that fraud was involved in the procurement of the contract, a fraud decision will be rendered by the Insurance Claims Division. The fraud decision will be the authority for canceling the insurance, or the authority for canceling other actions taken and restoring the insurance to its status before such action was taken.
2. If a fraud decision is rendered under paragraph a, but monies were received with the application or request for action, the disposition of monies will be governed by the following:
3. Premiums paid before the date of the fraud decision which are earned as of the date of the fraud decision are not subject to refund.
4. Premiums paid before the date of the fraud decision which are unearned as of the date of the fraud decision are to be considered as suspense items and are subject to refund.
5. Premiums paid on or after the date of the fraud decision are considered as suspense items and are subject to refund.
6. Regardless of the date paid, overpayments and other items in suspense, not subject to posting are subject to refund.

***NOTE****: Suspense items are not subject to offset without the permission of the insured.*

1. Refunds are made to payees in the following order of preference:
2. To the insured, if living.
3. To the beneficiary, if the insured is deceased.
4. To the insured's estate, if no beneficiary survives.
5. The following items are not subject to refund:
6. Reserve payments submitted in connection with antedated issues or conversions.
7. Difference in reserve on changes of permanent plans from lower to higher reserve values.
8. Premiums in arrears including interest on reinstatement.

***NOTE****: Premiums retained will remain in the trust funds or appropriations to which they are deposited.*

1. In cases where any loan, dividend, difference in reserve on a change in plan from a higher reserve, death award, or other payment is disbursed but would not have been disbursed except for the fraudulent act, an administrative decision shall be made as to the question of fraud and cases of potential fraud shall be referred to VA’s Office of Inspector General. See also VA Insurance Circulars 29-02-16 and 29-03-16 (setting forth procedures for deciding issues of administrative fraud and referring cases to VA Office of Inspector General for consideration of potential criminal fraud.) This process will satisfy VA’s duty to make administrative decisions as to potential fraud and to refer cases to VA’s Office of the Inspector General when there is evidence of possible criminal activity pursuant to 38 CFR 1.204.

1. If the insured is deceased and erroneous death insurance benefit payments have been made, it will be necessary for the Insurance Accounting staff to offset the erroneous payments.

**28.03 FRAUDULENT ENLISTMENT**

1. Subject to the provisions of title 38 U.S.C. 1910 and 38 CFR 8.29, insurance issued, reinstated, or converted is incontestable, except for fraud, nonpayment of premiums, or on the grounds that the applicant was not a member of the military or naval forces of the United States. Discharge or release of an insured from military or naval service for the reason of fraudulent enlistment does not invalidate insurance issued on the basis of such service, unless the Assistant Director for Insurance Operations determines that the insured was mentally or legally incapable of entering into a contract of enlistment. Where it has been determined that the insured was mentally or legally incapable of entering into a contract of enlistment, any insurance issued on the basis of such service will be canceled as of the effective date of the insurance.
2. Fraudulent enlistments may be indicated in court-martial orders, copies of discharge papers, etc. When any material is received which indicates a fraudulent enlistment, the facts will be fully developed.

**28.04 FORFEITURE UNDER 38 U.S.C. 1911**

1. Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to NSLI. However, the contract values, if any, of such insurance as of the date of such offense shall be paid to the insured, if living, or otherwise to the designated beneficiary or beneficiaries.
2. The service departments furnish VA with electronic documents, other documentation, and/or data establishing the general or special court-martial orders announcing approved findings of courts-martial involving mutiny, treasonable acts, spying, desertion, or refusal to perform service in the Armed Forces of the United States or refusal to wear the uniform of such forces because of conscientious objections. The following list sets forth offenses in violation of the Uniform Code of Military Justice, which may be cause for forfeiture:

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| **Offense​** | **​ Uniform Code of Military Justice Article No. ​** |
| Desertion​​ |              85 |
| Mutiny​ |              94 |
| ​Treason |            104 |
| ​Spying           |            106​ |

1. Where insurance is canceled because of forfeiture, the disposition of premiums will be governed by the following:
2. Premiums paid before the date of commission of the forfeiture offense or before the date of execution, which are earned, are not subject to refund.
3. Premiums paid on or after the date of commission of the forfeiture offense or date of execution are subject to refund.
4. Regardless of the date paid, overpayments and pending items, not subject to posting, are refundable.

**28.05 DEATH INFLICTED AS LAWFUL PUNISHMENT FOR CRIME OR MILITARY OR**

 **NAVAL OFFENSE**

1. Under provisions of title 38 U.S. Code and VA regulations, no insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States. However, the cash surrender value, if any, of such insurance on the date of such death shall be paid to the designated beneficiary or beneficiaries, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in 38 U.S.C. 1916(b) for NSLI or to the estate of the insured for USGLI.
2. Where satisfactory evidence discloses that death was inflicted as a lawful punishment for crime, or for military or naval offense, other than forfeiture as defined in 38 U.S.C. 1911 for NSLI, the insurance will be canceled as of the date of execution.