

§ 21.4212

the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) *Jurisdiction.* The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) *Committee members.* The Committee on Educational Allowances will consist of three employees of the VA Regional Processing Office of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA Regional Processing Office of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) *Duties and responsibilities of the Committee.* (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA Regional Processing Office of jurisdiction in connection with specific cases referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA Regional Processing Office of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the

38 CFR Ch. I (7–1–10 Edition)

essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

[63 FR 35833, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

§ 21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee.* When the Director of the VA Regional Processing Office of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will—

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued; approval of new enrollments should be denied; and/or payment to individuals for licensing or certification tests should be denied, as appropriate.

(b) *Notice of the referral.* (1) At the time of referral the Director will—

(i) Send notice of the referral, including a copy of the referral document, by

Department of Veterans Affairs

§21.4214

certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA Regional Processing Office of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35834, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

§21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in §21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of—

- (1) The time and place of the hearing;
- (2) The matters to be considered;

(3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and

(4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) *Publication of hearing notice.* Notice of the hearing will be published in the FEDERAL REGISTER, which will constitute notice to any interested individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35834, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

§21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) *Rule 1.* The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a *voir dire* of the Committee members.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) *Rule 2.* At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations, and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA Regional Processing Office of jurisdiction take an adverse action on the issues submitted for its review. The