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(3) Consists of a combination of training as described in paragraphs (e)(1) and (e)(2) of this section.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

(f) *Course approval.* A State approving agency may approve a course offered by independent study or a combination of independent study and resident training only if the course—

- (1) Is accredited;
- (2) Meets the requirements of § 21.4253; and
- (3) Either—
 - (i) Leads to a standard college degree; or
 - (ii) For courses approved on or after December 27, 2001, leads to a certificate that reflects educational attainment offered by an institution of higher learning.

(Authority: 38 U.S.C. 3672, 3675, 3680A(a)(4))

(g) *Remedial and deficiency courses.* Remedial and deficiency courses offered by independent study cannot be approved.

(Authority: 38 U.S.C. 3672, 3675, 3680A(a)(4))

[61 FR 6783, Feb. 22, 1996, as amended at 62 FR 40280, July 28, 1997; 73 FR 2426, Jan. 15, 2008]

§ 21.4268 Approval of licensing and certification tests.

(a) *Authority to approve licensing and certification tests.* (1) Except for approval of the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2), are VA's responsibility, the Secretary of Veterans Affairs delegates to each State approving agency the authority, within the respective State approving agency's jurisdiction provided in § 21.4250(a), to approve licensing and certification tests and to approve the organizations or entities offering licensing and certification tests.

(2) The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve the licensing and certification tests and the organizations or entities offering these tests

that, as provided in § 21.4250(c)(2)(vi), are VA's responsibility.

(Authority: 38 U.S.C. 512(a), 3689(a)(2))

(b) *Approval of tests.* (1) If an organization or entity wants a licensing or certification test that it offers to be approved for payment of educational assistance, it must apply for approval to the State approving agency having jurisdiction over the locality where the organization or entity has its headquarters. The application must be in the form the State approving agency requires.

(2) In order to be approved for payment of educational assistance to veterans and eligible persons, a licensing or certification test must meet the requirements of paragraph (b) of this section, and the organization or entity offering the test must meet the requirements of paragraph (c) of this section and, if appropriate, the requirements of paragraph (d) of this section.

(i) The State approving agency may approve a licensing or certification test only if—

(A) The test is required under Federal, State, or local law or regulation for an individual to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession; or

(B) The State approving agency decides that the test is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession.

(ii) If a State or political subdivision of a State offers a licensing or certification test, the State approving agency will deem the test to have met the requirements of paragraph (b) of this section.

(3) In considering whether the test is generally accepted, a State approving agency may consider the following:

(i) The nature and number of the entities that recognize the certificate awarded to candidates who pass the test;

(ii) The degree to which employers in the relevant industry accept the certification test;

(iii) Whether major employers in an industry require that their employees obtain the certificate awarded to candidates who pass the test;

(iv) The percentage of people employed in the vocation or profession who have taken the test and obtained the certificate; or

(v) Any other reasonable criterion that the State approving agency believes will clarify whether the test is generally accepted.

(4) Generally, if a State approving agency approves a certification test, VA will consider that the test is approved for any veteran or eligible person even if he or she takes the test at a location outside the State where the organization or entity offering the test has its headquarters. However, a certification test approval is valid only in the State where the State approving agency has jurisdiction if—

(i) A State licensing agency recognizes the certification test as meeting a requirement for a license and has sought approval for that test; and

(ii) The State approving agency for the State where the licensing agency is located approves that test.

(Authority: 38 U.S.C. 3689)

(c) *Approval of organizations or entities offering licensing or certification tests.* An organization or entity must meet the requirements of this paragraph and, if a nongovernmental organization, of paragraph (d) of this section, in order for the State approving agency to approve a licensing or certification test that the organization or entity offers for payment of educational assistance to veterans and eligible persons who take the test. The organization or entity must—

(1) Maintain appropriate records with respect to all candidates who take the test for a period of not less than three years from the date the organization or entity administers the test to the candidates;

(2) Promptly issue notice of the results of the test to the candidate for the license or certificate;

(3) Have a process to review complaints submitted against the organiza-

tion or entity with respect to the test or the process for obtaining a license or certificate required for a vocation or profession;

(4) Give to the State approving agency the following information:

(i) A description of the licensing or certification test that the organization or entity offers, including the purpose of the test, the vocational, professional, governmental, and other entities that recognize the test, and the license or certificate issued upon passing the test;

(ii) The requirements to take the test, including the amount of the fee charged for the test and any prerequisite education, training, skills, or other certification; and

(iii) The period for which the license or certificate is awarded is valid, and the requirements for maintaining or renewing the license or certificate; and

(5) Agree to give the following information to VA at VA's request:

(i) The amount of the fee a candidate pays to take a test;

(ii) The results of any test a candidate takes; and

(iii) Personal identifying information of any candidate who applies for reimbursement from VA for a test.

(Authority: 38 U.S.C. 3689(c))

(d) *Approval of nongovernmental organizations or entities offering certification tests.* (1) In addition to complying with the requirements of paragraph (c) of this section, a nongovernmental organization or entity must meet the requirements of paragraph (d) of this section before a certification test it offers can be approved for payment of educational assistance to veterans and eligible persons who take the test. Except as provided in paragraphs (d)(3) and (d)(4) of this section, the organization or entity—

(i) Certifies to the State approving agency that the licensing or certification test offered by the organization or entity is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in

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a predetermined and identified vocation or profession;

(ii) Is licensed, chartered, or incorporated in a State and has offered the test for a minimum of two years before the date on which the organization or entity first submits to the State approving agency an application for approval under this section;

(iii) Employs, or consults with, individuals with expertise or substantial experience with respect to all areas of knowledge or skill that are measured by the test and that are required for the license or certificate issued; and

(iv) Has no direct financial interest in—

(A) The outcome of the test; or

(B) An organization that provides the education or training of candidates for licenses or certificates required for a vocation or profession.

(2) At the request of the State approving agency, the organization or entity seeking approval for a licensing or certification test must give such information to the State approving agency as the State approving agency decides is necessary to perform an assessment of—

(i) The test the organization or entity conducts as compared to the level of knowledge or skills that a license or certificate attests; and

(ii) The applicability of the test over such periods of time as the State approving agency decides is appropriate.

(3) The provisions of paragraph (d)(1)(ii) of this section will not prevent the approval of a test if the organization or entity has offered a reasonably related test for at least two years.

(4) The provisions of paragraph (d)(1)(iv) of this section will not prevent the approval of a test if the organization or entity—

(i) Offers a sample test or preparatory materials to a candidate for the test but does not otherwise provide preparatory education or training to the candidate; or

(ii) Has a financial interest in an organization that provides preparatory education or training of a candidate for a test, but that test is advantageous in but not required for practicing a vocation or profession.

(Authority: 38 U.S.C. 3689(c))

(e) *Notice of approval and withdrawal of approval.* The State approving agency must provide notice of an approval of a test as required in § 21.4250(b). If the State approving agency wishes to withdraw approval of a test, it must follow the provisions of § 21.4259.

(Authority: 38 U.S.C. 3689(d))

(f) *A decision to disapprove a test or an organization or entity offering a test may be reviewed.* (1) If an organization or entity offering a test disagrees with a State approving agency's decision to disapprove a test or to disapprove the organization or entity offering the test, it may seek a review of the decision from the Director, Education Service. If the Director, Education Service has acted as the State approving agency, the organization or entity may seek a review of the decision from the Under Secretary for Benefits.

(2) The organization or entity must make its request for a review in writing to the State approving agency. The State approving agency must receive the request within 90 days of the date of the notice to the organization or entity that the test or the organization or entity is disapproved.

(3) The review will be based on the evidence of record at the time the State approving agency made its initial decision. It will not be *de novo* in character.

(4) The Director, Education Service or the Under Secretary for Benefits may seek the advice of the Professional Certification and Licensure Advisory Committee, established under 38 U.S.C. 3689(e), as to whether the State approving agency's decision should be reversed.

(5) The decision of the Director, Education Service or the Under Secretary for Benefits is the final administrative decision. It will not be subject to further administrative review.

(Authority: 38 U.S.C. 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0697)

[72 FR 16975, Apr. 5, 2007]

ASSESSMENT AND PURSUIT OF COURSES

§ 21.4270 Measurement of courses.

(a) *Measurement of trade, technical, and high school courses.* Trade, technical, high school, and high school preparatory courses shall be measured as stated in this paragraph.

(1) *Trade and technical courses.* (i) Except as provided in paragraph (b) of this section, if shop practice is an integral part of a trade or technical course not leading to a standard college degree—

(A) A full-time enrollment is 22 clock hours per week (exclusive of supervised study) with not more than 2½ hours rest period allowance;

(B) A three-quarter-time enrollment is 16 through 21 clock hours per week (exclusive of supervised study) with not more than 2 hours rest period allowance;

(C) A one-half-time enrollment is 11 through 15 clock hours per week (exclusive of supervised study) with not more than 1¼ hours rest period allowance;

(D) A less than one-half-time but more than one-quarter-time enrollment is 6 through 10 clock hours per week (exclusive of supervised study) with not more than ¾ hour rest period allowance; and

(E) A quarter-time enrollment is 1 through 5 clock hours per week (exclusive of supervised study).

(ii) Except as provided in paragraph (b) of this section, if theory and class instruction constitute more than 50 percent of the required hours in a trade or technical course not leading to a standard college degree, enrollments will be measured as follows. In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in a school's shops and the time involved in field trips and group instruction may be included in computing the clock hour requirements.

(A) A full-time enrollment is 18 clock hours net instruction per week (exclusive of supervised study);

(B) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week (exclusive of supervised study);

(C) A one-half-time enrollment is 9 through 12 clock hours net instruction per week (exclusive of supervised study);

(D) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week (exclusive of supervised study); and

(E) A quarter-time enrollment is 1 through 4 clock hours net instruction per week (exclusive of supervised study).

(2) *High school courses.* If a student is pursuing high school courses at a rate which would result in an accredited high school diploma in four ordinary school years, VA considers him or her to be enrolled full time. Otherwise, for high school enrollments, training time will be determined as follows. (For the purpose of this paragraph, a unit is not less than one hundred and twenty 60-minute hours or the equivalent of study in any subject in one academic year.)

(i) A full-time enrollment is 18 clock hours net instruction per week or four units per year or the equivalent;

(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week or three units per year or the equivalent;

(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week or two units per year or the equivalent;

(iv) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week or one unit per year or the equivalent; and

(v) A one-quarter-time enrollment is 1 through 4 clock hours net instruction per week.

(3) *Elementary school.* For a high school preparatory course pursued at the elementary school level—

(i) A full-time enrollment is 18 clock hours net instruction per week;

(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week;

(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week;